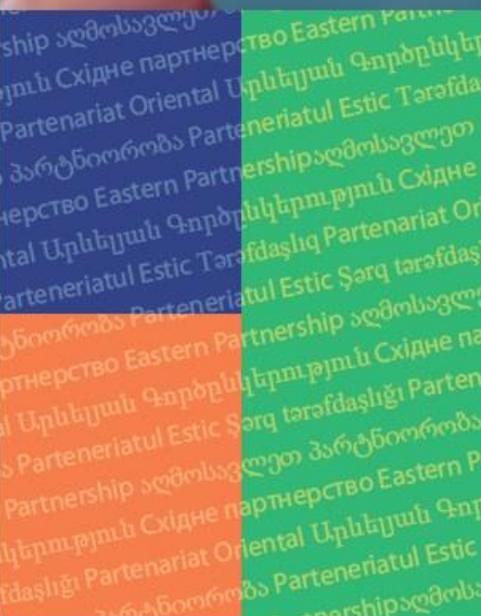




Strengthening institutional frameworks
for local governance



Roles and responsibilities of mayors and local councillors in Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus

Working together
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**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

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by the Council of Europe

**Roles and responsibilities of
mayors and local councillors
in Armenia, Azerbaijan, Georgia,
Moldova, Ukraine and Belarus**

Abbreviations and acronyms

Congress: Congress of Local and Regional Authorities

Charter: European Charter for Local Self-Government

EaP: Eastern Partnership

EU: European Union

LGU: local-government unit

LSG: local self-government

NGO: non-governmental organisation

Cover: SPDP Council of Europe

Text : Congress of the local and regional authorities of the Council of Europe

Print: Council of Europe

Edition: January 2016

This document is being produced with the financial assistance of the European Union and the Council of Europe. The views expressed herein can in no way be taken to represent the official opinion of the European Union and the Council of Europe

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Foreword

Mayors and local councillors play a vital role in promoting the principles of local democracy and shared values within their communities. Aside from the role prescribed in the legislation, it is upon them to establish standards of good governance, ethical behaviour and transparency in concrete terms as they are the public officials closest to citizens.

The challenges faced at global level demand resolute actions in order to implement the principles of ethical governance, sustainable development and greater solidarity in public policies. Local authorities, more than ever, are compelled to propose innovative approaches to manage and respond to the challenges arising with today's urban development. It is upon them and their political leaders to promote new initiatives and exercise their public responsibilities in an effective and inclusive manner.

Analysing the respective national legislation and its practical application in Armenia, Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Belarus, it is evident that the nature of this responsibility can vary due to differing trends, not only within the legal framework of a country and its capacity for further decentralisation, but also through the overarching vision and political will. While the principles of local democracy are a straightforward concept and based on the European Charter of Local Self-Government, the practice and the implementation vary from country to country.

The study on the roles and responsibilities of mayors and local councillors in Armenia, Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Belarus, commissioned by the Congress of Local and Regional Authorities, takes an integral look at the execution of roles and functions, the division and scope of responsibilities, and the financial situation faced by local elected representatives. By addressing the issues that local authorities encounter concerning the core legal structure, its implementation and the exercise of their powers, Professor Juraj Nemeč, member of the Group of Independent Experts on the European Charter of Local Self-Government, with support from the respective experts in each of the countries concerned, has developed a set of practical recommendations in this regard.

Five main areas were identified for further action to enhance local democracy. The findings and recommendations were developed through an inclusive approach involving the relevant ministries and associations of local and regional authorities in each country.

Furthermore, the study analyses the relevant legislation within each country, highlighting their compliance with the European Charter of Local Self-Government – a unique legal instrument, ratified by all 47 Council of Europe member States. The promotion of the principles of the Charter and their practical implementation is at the core of the Congress' activities to advance the rights of local authorities.

It is with this perspective that the study has been developed to contribute to strengthening the role and powers of local leaders, in order for them to take full ownership of their actions for the development and well-being of their communities. I would like to give my sincere thanks to all involved in this process.

Andreas Kiefer

A handwritten signature in black ink, appearing to read 'Andreas Kiefer', written in a cursive style.

Secretary General
The Congress of Local and Regional Authorities

Executive summary of key findings, conclusions and recommendations

This study, which focuses on the roles and responsibilities of mayors and councillors in the Eastern Partnership countries, has been developed within the Council of Europe/European Union Eastern Partnership Programmatic Co-operation Framework (PCF) 2015-2017, and is related to Theme V “Promoting Democratic Governance”, jointly implemented by the Directorate General of Democracy and the Congress of Local and Regional Authorities of the Council of Europe. The aim of this study is to provide a clear picture of the legislative and practical lacunae that hinder the effective implementation of the tasks incumbent on local elected representatives in the region and to suggest proposals to improve the situation (as of autumn 2015).

The European Charter of Local Self-Government (CETS No. 122), hereafter “the Charter”, represents the core source and the benchmark for the improvement of local government systems in Europe and also in turn for the analysis and the synopsis in this study. Within the Eastern Partnership region, the Charter was ratified by the Republic of Moldova and Ukraine in 1997, Armenia and Azerbaijan in 2002, and Georgia in 2004. Armenia, Azerbaijan and Georgia ratified the Charter with reservations. Belarus is not a member state of the Council of Europe and has not signed the Charter. The Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207), opened to signature in 2009, was ratified by Armenia in 2013 and by Ukraine in 2014.

When reforming their public administration systems, all countries included in this report created their own legislative framework, thereby determining the distribution of powers and competences between government bodies, as well as the main rules to govern the functioning of local self-governments (LSGs). However, certain gaps (on a different scale in each country) remain and every system requires improvement in order to fully comply with all Charter principles.

In Belarus and Azerbaijan, most powers at the local level lie with state administration bodies. Systemic changes to the constitution and local government laws are core future reform tasks in these two countries.

The local government system in Armenia is highly dependent on central government. The level of independence, as well as the level of decentralisation, is low. Local government units (LGUs) do not have sufficient power to deliver essential public services at the community level or to organise community life properly. This is mainly due to the low level of decentralisation in Armenia – the relationship between LGUs and the territorial state administration (*Marzpetarans*) is not properly regulated. However, the LSG situation might improve as the result of constitutional changes from made in December 2015.

In Georgia and the Republic of Moldova, the legal base for local government appears to be highly compliant with the Charter principles. Nonetheless, these countries are facing concerns connected with limited fiscal decentralisation and, to a different extent, challenges linked with excessive influence of political parties.

In Ukraine, the local government system prior to 2015 was mainly in compliance with the Charter principles, but most powers were allocated to the state authorities on the second and third levels. The concept of the reform of local self-government and territorial organisation of power, approved by the government on 1 April 2014, followed by a set of legal changes, promised that many changes would be introduced. The way in which the amalgamation of the first level will be implemented will show how pertinent these changes are.

There are different local self-government systems functioning in the region and these include both “mayoral” and “representative” forms. From the point of view of the legislation regulating the legal status and the conditions of the office of local elected representatives, the concrete arrangements differ significantly between countries of the Eastern Partnership region. In Armenia (except for the capital city Yerevan), Georgia, Republic of Moldova and Ukraine, the mayors are directly elected by citizens. In Georgia and Ukraine, the law stipulates that the mayor is the highest executive authority of the municipality; whereas in the Republic of Moldova, the mayor is the head of local government. In Azerbaijan, the mayors are elected by the local councils. In Belarus, deputies of local councils elect the chairman of the

local council of deputies (the word “mayor” is not applicable to this post).

In each respective country, national experts and their research respondents have reported a number of legal and implementation issues. This report lists these issues country by country and indicates that the most important of them are connected with the following: local finance, division and scope of responsibilities between public administration levels, relations between self-governments, central and decentralised state administration, relationship between core local self-government bodies (i.e. between the mayor and the council) and the quality of local democracy.

The core of this report (see Chapter 4) summarises the findings, presents the main strengths and weaknesses of the system and, where appropriate, benchmarks the situation regarding the Charter principles. The findings show that the main barrier to the full exercise of the responsibilities of local elected representatives in all six EaP countries is local finance.

Inadequate funding and funding systems are only too visible – the only country in the region that spends around one-third of public expenditure through local authorities is the Republic of Moldova; but because of the low economic performance of the country, this sum in absolute value is not sufficient to cover the expected own and delegated responsibilities. In comparison with the Republic of Moldova, the total local government revenues in Azerbaijan comprise less than 0.14% of the consolidated state budget (Table 1).

Table 1: LSG expenditure rates in EaP regions as GDP % (2014)¹

Armenia	Azerbaijan	Belarus ²	Georgia	Republic of Moldova	Ukraine
2,4	0,2	n/a	5 (estimate)	8,8	6,5

The freedom to use local finances is partly limited in all Eastern Partnership (EaP) countries, due to central government interference in local government spending decisions by means of several mechanisms. Real local taxation, with the right of local self-government to determine the structure of local taxes and to set the rates on the basis of local needs and priorities, does not exist in the region. However, in some countries the legislation already provides basic steps to achieve this – for example in the Republic of Moldova, local councils are free to establish the rates for local taxes, but are not allowed to introduce new taxes except the ones listed by the fiscal code.

In Georgia, LSGs have the right to introduce local fees and local taxes, as well as to abolish them, and to determine the rates; however, limitations are still set by the tax code.

Only the Republic of Moldova, starting in 2015, has a relatively effective and transparent equalisation formula, but in some countries the allocation of central grants to the local level is mostly based on subjective decision-making and is politically influenced.

The secondary topic of analysis concerns the **conditions of office of local elected representatives**. From the point of view of eligibility, it should be mentioned that in most EaP countries only national citizens who have lived for a certain period in a given community can be elected. From the point of view of recognition and reward, the notion of professionalism is applied to positions of mayors and, in most countries, to a few additional posts as well, while council members are expected to be volunteers (Table 2).

1. Data compiled from country reports

2. In Belarus, almost all local and regional expenditures are deconcentrated state administration expenditures, total sub national government expenditures account for 17% of the GDP.

Table 2: Salaries/compensation for local elected representatives³

MAYORS

Armenia	Azerbaijan	Belarus	Georgia	Republic of Moldova	Ukraine
The Mayor may receive approximately 660-1100 EUR per month related to the number of inhabitants in the municipality. ⁴	Permanent employment data is not available regarding the salaries.	Permanent employment data is not available regarding the salaries.	The Mayor may receive approximately 1 000 EUR per month (Tbilisi and big cities have higher salary for mayors). The vice-mayor may receive approximately 300 EUR per month in ordinary municipalities.	Permanent employment. The salaries differ according to the number of inhabitants and should start approximately from 250 EUR up to 440 EUR per month.	Permanent employment salaries are defined and approved by the LSG during the local council session. ⁵

3. As compiled from country reports.

4. Equating to around 52.57 to 90.52% from the salary of the member of the National Assembly of Armenia.

5. As follows the scheme approved by the Cabinet of Ministers of Ukraine; e.g. for municipalities with a population above 1 million – approximately 91 EUR is received; for municipalities with population above 15 thousand – approximately 61 EUR is received. This does not include additional payments and bonuses, which have to be approved by the LSG sessions.

COUNCILLORS

Armenia	Azerbaijan	Belarus	Georgia	Republic of Moldova	Ukraine
Local councillors execute their powers on an unpaid basis. However, they may receive approximately 28 EUR in compensation (per month). ⁶	Local councillors execute their powers on an unpaid basis.	Local councillors execute their powers on an unpaid basis.	Chairpersons of the commission and of political groups receive approximately 500 EUR on average, but up to 800 EUR in larger cities such as Tbilisi or Batumi. Those in lower positions receive different levels of compensation within each LSG unit (depending on the decision of local councils).	The law ⁷ stipulates that the local councillor should receive at least 2 conventional minimal salaries ⁸ for each session attended (approximately 2 EUR). The de facto compensation for a one-day local council meeting varies between 5-100 EUR.	Local councillors execute their powers on an unpaid basis, unless they obtain permanent positions in an LSG.

6. Compensation ordinarily amounts to approximately 30% of the compensation of MPs.

7. Article 24 of the Law on the status of local elected persons, no. 768/2000

8. According to the law 1432/2000 minimal salary is a conventional instrument to calculate different compensations, state fees, taxes, etc. Not to be confused with the minimal salary per economy or in public sector.

Training possibilities for local elected representatives and local staff are generally limited and the technical support from the municipal administration to deputies varies. Moreover, all country reports indicate a top-down approach and political pressure which limits the chances of local elected representatives to serve local needs. Concerning the situation of mayors and local councillors following their leave from office, some national reports indicate that major social problems may occur as a consequence (especially in Azerbaijan).

The third concerns the **relations between state and elected self-governments**. In all the countries concerned, the rather limited scope of self-government responsibility negatively affects the chances of local elected bodies to manage their territories. The sectors mentioned are primary and secondary education, health care and social security. Moreover, in some countries, especially in Ukraine, the principle of having full discretion to use local initiatives with regard to any matter not excluded from their competence nor assigned to any other authority, is not provided by law.

Frequently mentioned problems include interference between own and delegated responsibilities and the fact that local self-government laws especially sectoral ones are not effectively harmonised with other legislation.

The freedom of mayors (municipal councils) to establish and remunerate municipal administrative structures is restricted in all countries – in some of them by law and in others, such as Ukraine, by the realities of the situation and fiscal constraints.

Issues regarding improper supervision and control of self-government activities were noted in each country of the EaP region. In most, the legal bases that determine the methods of supervision need to be improved.

The level of consultations organised by central government to discuss major changes related to local government competences and the general situation is insufficient throughout the EaP region.

The fourth topic of analysis concerns the **relations between mayors and assemblies**. This issue is more complicated in countries with a “mayoral” self-government system. The most important common message from all countries is the need for unambiguous and

appropriate legal and procedural defining (and splitting) of the functions of mayors and community councils.

Last but not least, there is the issue of the **quality of local democracy**. Central governments in many developing countries have a tendency to argue that decentralisation, and especially fiscal decentralisation, cannot be fully attained because local elected representatives are not ready to deliver effective, accountable and responsible local governance. The information gathered from reports and from interviews with stakeholders indicates that lack of local capacity can also be a real issue in the EaP region.

Other region-specific issues that limit the quality in which the roles and responsibilities of local elected representatives are executed, include the politicisation of local life and limited participation by citizens in local affairs.

Specific issues mentioned, but not discussed in depth, are fragmentation and the non-existence of real second level self-government structures; a system of one tier self-government exists in Armenia, Azerbaijan and Georgia, while in other countries, the “regional” level is more formal than real.

The final Chapter on strengthening the roles and powers of local elected representatives provides **recommendations** to enable them to better contribute to local democratic governance. It is structured according to and addresses the issues of concern summarised in Chapter 4, “Overview of main strengths and weaknesses”.

It is evident that major steps towards real fiscal decentralisation are required from all governments in the EaP region. Such processes should be evidence based – thus the immediate task is to introduce systems which will allow the collection of data on real costs of delivery of own and delegated responsibilities, local services and administrative functions. Without data, the attempt to establish a proportional relationship between competences and resources is unlikely to be successful. Local governments should be free to determine and to use resources connected with their own responsibilities, while simultaneously, the legality, efficiency, economy and effectiveness of their spending decisions should be internally and externally controlled and audited. To manage possible

inequalities between revenue and spending, transparent systems of equalisation and allocation of extra funds should be created.

So far as the conditions of office are concerned, EaP countries should review all restrictions on those who can stand for local elections and also review the salary conditions of employed self-government staff, especially mayors, including any social security issues. Other possible tasks include creating effective systems for reimbursement of the work carried out by elected local deputies and improving the independence guarantees for local elected representatives.

So far as relations between different levels of public administration are concerned, the core issue is reconsidering and clarifying the division of tasks and powers between parallel structures of public administration, transferring the most important local public competences to democratically and politically accountable municipalities. The principle of subsidiarity should be a constitutional principle, own and delegated responsibilities should be clearly separated in both law and practice, and sectoral legislation must be harmonised with self-government laws. In addition, a system of actual and systemic consultations between the state and local authorities should be established. Local governments should receive full rights (and sufficient finance) to create their own administrative structures and have full and real access to legal remedies against improper "state interventions".

So far as the relations between mayors and assemblies are concerned, it is impossible to propose a universal model. However, the relationship between various power structures at the local level should be built on a functional system of checks and balances, with a clear description of the rights and responsibilities of those different power structures.

The different dimensions of the quality of local democracy also need to be urgently addressed, especially the need for effective de-politicisation (in other words, reducing the over politicisation) of local life, increase in openness, transparency and accountability of local bodies and increase in citizen participation.

1. Introduction

The local self-government (LSG) reform represents one of the priorities for most countries of the Eastern Partnership (EaP) region. The Council of Europe is a crucial supporter of such trends and supports all involved governments with the review of their legal frameworks on LSG, with a view to increase their compatibility with relevant European standards, especially with the European Charter for Local Self-Government (Charter), and to facilitate the fulfilment of the commitments which they undertook.

The Congress of Local and Regional Authorities (Congress) is a pan-European political assembly; the 648 members of which hold elective office (they may be regional or municipal councillors, mayors or presidents of regional authorities) represent over 200,000 authorities in 47 European states. Its main role is to promote local and regional democracy, improve local and regional governance, and strengthen authorities' self-government. It pays particular attention to the application of the principles laid down in the Charter. It encourages the devolution and regionalisation processes, as well as trans-frontier co-operation between cities and regions; conducts regular monitoring of the situation of local democracy in member states on the basis of their commitments and legal obligation; and on the basis of these findings the Congress adopts recommendations which are addressed to the national authorities with a view to improving the overall governing system.

The latest recommendations for the countries concerned were adopted in 2012 (Republic of Moldova and Azerbaijan), 2013 (Georgia and Ukraine) and 2014 (Armenia). They are set out in Annex 2.

This study on roles and responsibilities of mayors and councillors in the EaP countries is a part of the Council of Europe/EU Eastern Partnership Programmatic Co-operation Framework 2015-2017, related to Theme V "Promoting Democratic Governance", and in particular, thematic programme V.2 "Strengthening institutional frameworks for local governance", which is jointly implemented by DG II and the Congress. The goal of this project is to mobilise both political and technical expertise, and experience from all participating beneficiary and contributing countries, and to provide specific results for shared use.

The aim of this study is to provide a clear picture of the legislative and practical gaps which impede the effective implementation of the responsibilities of mayors and local councillors in their respective countries, as in line with the principles of local democracy (as of autumn 2015). Its conclusions and recommendations are expected to support the establishment of a transparent, reliable and efficient local self-government system in the EaP countries. The focus is on the local level, the regional level being mentioned where appropriate. The results of this study and connected activities are expected to result in: improvement in the knowledge of local elected representatives on European standards on local and regional democracy and enhanced leadership capacities; sufficient human resources and qualified staff; adequate and modern equipment; improvement and acceleration of proceedings; and other relevant measures.

The concrete output of this study is the analysis of the current situation concerning the roles and responsibilities of local elected representatives in the EaP region, with the focus on identifying the basic barriers limiting their opportunity to execute their roles and responsibilities, as well as proposals on how to improve the situation (in general and for each country involved in particular).

The concrete output of this study is an analysis of the current situation concerning the roles and responsibilities of local elected representatives in EaP region, with a focus on identifying the core barriers limiting the capacities to execute their roles and responsibilities, and providing proposals on how to improve the situation (in general and in particular, for each country involved).

The preparation of this study is based on comprehensive methodology as the safeguard to guarantee effective results. The main methodological steps are as follows.

- Co-ordination of meetings between the project team and international/local experts (first meeting to agree on research approaches and second to discuss results from national studies and possible recommendations).
- Preparation of country studies (reports) by national experts and first draft report by the international expert. The country studies are based especially on primary research data – interviews, questionnaires filled out by different stakeholders

and secondary research data – collected via own desk research by the national experts.

- Consultation on the study with the main stakeholders from the EaP countries, including local government associations, relevant ministries, civil society. Project conference involving a large number of potential stakeholders (presentation and discussion of preliminary analytical results and proposals).
- Finalisation of the main comprehensive report with analysis and proposals by the lead expert.

The structure of this document – the main project study – represents the logical steps taken to achieve planned goals. Chapter 1 summarises the purposes of this study and the methodology used. Chapter 2, country by country, highlights the main factors determining the execution of roles and responsibilities of local elected representatives in the EaP region. Chapter 3 highlights, again county by country, the main legal and implementation problems limiting the chances of local elected representatives to execute their responsibilities and duties. The two final chapters represent the core elements of this text – they summarise problems according to the main identified areas and propose solutions: general solutions valid for the entire region, but also country-specific solutions, reflecting specific local environments.

2. The legislative framework regulating the legal status and other conditions of the office of elected self-government representatives

The Charter represents the core source and benchmark for improving local government systems in Europe. It has been ratified by all 47 Member States of the Council of Europe. So far as the Eastern Partnership region is concerned, the Republic of Moldova and Ukraine ratified it in 1997, Armenia and Azerbaijan in 2002 and Georgia in 2004. The Additional Protocol on the participation of citizens in the conduct of public affairs, opened to signature in 2009, was ratified by Armenia in 2013 and by Ukraine in 2014.

The ratification of the Charter (with or without reservations) concludes the requirement for continuous improvements of the LSG system in all countries involved. This task is especially important in transitional countries which are willing to replace old centralised state administration structures with genuine local self-governments, protected by the powers of national constitutions and delivering real local governance.

The following part of the study highlights, country by country, the current situation from the point of view of achieved progress in creating the proper legislative framework regulating the status and core conditions of office of elected self-government representatives.⁹

9. All information provided in this, and later parts, is time bound, due to a number of ongoing changes. In Armenia, amendments to the constitution were passed in a referendum held on 6 December 2015. Charter on Local Self-Government will be significantly changed to reflect new amendments. In Georgia, the process of change connected with the new LSG code is not yet finished. Ukraine is currently realising major decentralisation reforms, which have received the positive approval of the Venice Commission. The main reform directions were approved by Parliament and also by the Constitutional Court. The new legislation may help to solve many issues of concern mentioned in this report (November 2015).

ARMENIA

Armenia is a country with a one-tier system of self-government (see Annex 1). The legal base determining the legal status and conditions of office for local elected representatives is regulated by the Armenian Constitution and Electoral Code of the Republic of Armenia, the Local Self-Government Act and the LSG of Yerevan Act, as well as other legal Acts (Local Referenda Act, Budgetary System Act, Municipal Services Act, Financial Equalisation Act, etc.).

Citizens who are residents of a given community (of a minimum defined age) and have a voting right may be elected as the community council members and/or chief of the community (mayors). Mayors are directly elected with the exception of the capital city Yerevan, where the mayor is elected by the city council. Dismissal of the directly elected mayor by the municipal council is technically possible, but has not been applied in practice so far (the final decision on dismissal must be received from Constitutional Court level). The mayor does not have a right to vote at meetings of the council. The deputy mayor is appointed directly by the mayor.

The position of the chief of the community (mayor) is a full-time paid job and the salary is established according to a percentage of the salary of a member of the National Assembly of Armenia.¹⁰ The actual rate must be approved by the community council. The appointed deputy chief of the community (vice-mayor) is also a paid job (although this is not an elected post).

According to Article 19 of the LSG Act, a member of a community council is entitled to receive reimbursement for the costs incurred in fulfilling the duties defined by the LSG Act. However, most municipalities do not pay any reimbursement fees. Since 2012, councillors in Yerevan have been entitled to receive reimbursement for

10. The lowest percentage is up to 52.57% for the community with fewer than 1 000 inhabitants, the highest is up to 90.52% for the community with more than 75 000 inhabitants. The actual salaries of elected mayors in municipalities with around 16 000-18 000 inhabitants, range from 286 000 to 400 000 Armenian dram (AMD) (540 – 750 EUR, approx.).

the costs incurred in fulfilling the duties defined by the LSG of Yerevan Act and the decision of the Municipal Council of Yerevan (26 June 2012, No. 463A).¹¹

The rights and responsibilities of the community councils, mayors and their relationship are defined by the LSG Act, and this system works relatively well. The core problem is the relationship between elected bodies and decentralised state administration bodies (*Marzpetarans*), which is not legally regulated and allows the state administration to interfere directly or indirectly in local matters.

The mayors' management freedom to establish their own proper administrative structures is provided by the law, but partly blocked by financial constraints.¹²

AZERBAIJAN

Azerbaijan is a country with a one-tier system of self-government (see Annex 1). The status of elected members of municipalities and their activities are regulated by two main laws: the Status of Municipal Members Act and the Status of Municipalities Act.

The mayor and the deputy mayor are elected by the municipal council, which also holds the right to dismiss them from their positions.

According to Article 15 of the Status of Municipalities Act, a certain number of municipal members are subject to employment on a permanent basis.¹³ Unpaid municipal employees can carry out their

11. It depends on the minimum salary/wages established in the country and it was around AMD32 500 (60 EUR, approx.) in 2012 and from July 2015 it will be AMD55 000 (100 EUR, approx.).

12. The example of salary levels of administrative staff for a municipality with around 18 000 inhabitants: head of staff AMD300 000 (565 EUR, approx.); advisor or assistant to the mayor from AMD100 000 to 130 000 (190 – 250 EUR, approx.); head of financial department AMD280 000 (530 EUR approx.); heads of other departments from AMD250 000 to 280 000 (470 – 530 EUR, approx.); senior specialists from AMD100 000 to 150 000 (190 – 280 EUR, approx.); specialists up to AMD100 000 (190 EUR, approx.); other employees from AMD66 000 to 95 000 (120 – 180 EUR, approx.); and the driver AMD135 000 (250 EUR, approx.).

13. 2 paid elected council members for a municipal assembly of 5 to 7 members, 3 for a council of 9 to 11 members, 4 for a council of 13 to 15 members, 5 for a council of 17 to 19 members.

responsibilities and, at the same time, work in production or service industries, as well as be engaged in academic training and creative activities. During municipal meetings or at meetings of the permanent commissions of the municipality, a municipal employee is relieved from carrying out permanent duties at the workplace. The state also guarantees effective and uninterrupted operations, rights, honour, and self-esteem of municipal employees: the legislation defines social warranties for different positions of municipal employees and a system of training has also been established.

The rights and responsibilities of the municipal council, the mayor and their relationship are defined by law and this system works relatively well. The core problem is the rather limited scale of municipal responsibilities – at present, the real scope of competences of municipalities in the country is limited to a few local services, such as maintaining the municipal roads, delivering social assistance to citizens not covered by the state social programmes, maintaining cemeteries and other similar services. Moreover, elected bodies are informally subordinated to the local state administration, namely to executive committees.

The formal right to establish LSG offices is effectively blocked on the basis of insufficient local financial resources – the law defines the maximum proportion of salary costs to total LSG costs and in reality most municipalities do not have enough resources to cover prescribed salaries to elected representatives.

BELARUS

It should be recalled that, since Belarus is not a member of the Council of Europe, it is not a signatory of the European Charter for Local Self-Government.

The system of local self-governance in Belarus has three levels – regional, basic and primary (see Annex 1). The Status of a Deputy of a Local Council of Deputies Act establishes that a deputy of a local council is a representative of citizens elected through free elections, who is authorised to participate in exercising state authority by the local council, to represent the electorate in state government bodies

and other organisations, as well as to exercise other powers and authorities provided by the constitution and the law.

The council chairperson is elected and can be dismissed by the council. There are three paid members of staff (chairperson of the Council, main specialist and the driver) at regional and basic levels and there are no paid members of staff at the lowest level. As of 1 July 2015, in the system of local councils of deputies (in 1 328 local councils), 398 employees were employed, of whom 270 were civil servants (chairpersons of the council and main specialists).

In addition, at the primary (rural) level, the chairperson of the council also serves as the chairperson of the executive committee at the primary (rural) level (state administration). Therefore, if such a chairperson of the executive committee leaves the post, such person automatically loses the elected position of the chairperson of the council at the primary (rural) level.

The rules and procedures defining the relations between the chairperson and the council are stipulated in the Local Government and Self-Government" Act. The data on the salary levels for employees of LSGs are not made public according to national legislation (according to the Ordinance of the President of the Republic of Belarus of 4 June 2013 No. 254 - such data are for official use only).

GEORGIA

Georgia is a country with a one-tier system of self-government (see Annex 1). The status of local elected representatives is regulated by the LSG Code and the Election Act. The Act directly states that the mayor (in cities) and "*gamgebeli*" (in rural municipalities)¹⁴ is the executive branch of local government and the highest ranking official of the municipality. The Act also states that only Georgian citizens can be elected as mayors and councillors. The specific feature of Georgian legislation is the fact that directly elected mayors can be dismissed by the decision of the local council: the ground for initiating such a procedure must be by written consent of more than half of the local council members or at least 20% of registered local voters, while a

14. The study uses the term "mayor" for both types of municipalities in further text.

two-thirds majority is needed to pass the vote in the council. In the case of unconditional dismissal of the mayor (similar to cases in which his/her responsibilities are suspended before the end of his/her term), the first deputy mayor or the deputy mayor undertakes his/her responsibilities. According to the Election Act early elections are to be held no later than 50 days from such dismissal. Only in the case when there is less than one year left before the regular elections, are early elections not held.

The salary of the mayor is adopted by the assembly, but within the frame of the maximum amount indicated by the Government of Georgia.

Municipal assembly members must exercise their authority without leaving their employment and on a voluntary basis. An employer has no right to limit the activities of the member of a municipal council (*sakrebulo*), which are connected with his/her job as a local councillor. Only the following officials receive remuneration for work: chairperson of the municipal assembly, deputy chairperson of the municipal assembly, commission chairman of the municipal assembly and the divisional chairman. The maximum amount of remuneration for the chairperson of the council is defined by Decree of the Georgian Government. The fact that divisional chairperson is a paid position motivates the creation of as many divisions as possible.¹⁵

The expenses of a municipal assembly member, related to fulfilment of their duties, shall be reimbursed in accordance with the procedure set under the assembly regulations. The reimbursement of assembly members' expenses in the form of bonuses and additional payments is not permitted.

Expenses of municipal assembly members, related to the fulfilment of their duties, are to be reimbursed in accordance with the procedure set out under the Assembly Regulation. The reimbursement of assembly members' expenses in the form of bonuses and additional payments is not permitted. In reality, the existing practice is inconsistent; it varies

15. According to the data of 2014, the Senaki *Sakrebulo* is composed of 25 members and 7 factions had been created; 6 factions in the Mestia *Sakrebulo* composed of 22 members; 5 factions in the Mtskheta *Sakrebulo* with 21 members; and 7 factions in the Kaspi *Sakrebulo* with 22 members (the LSG code stipulates that a faction should have at least 3 members).

according to the different municipalities and is modified almost every year.¹⁶

Georgian legislation does not envisage the existence of any collegial body in the executive branch of local administration (Tbilisi is a specific case: the Tbilisi City Hall is a system of executive bodies of Tbilisi municipality - therefore, the mayor himself is not an executive body, but a part of the system). The law says that a mayor is an executive body itself; hence all executive decisions at local level in Georgia have a unilateral nature that makes the responsibility of the mayor unilateral as well and puts enormous pressure on the office of the directly elected mayor. The fact that the mayor needs consensus from the local council on all important (especially budget and property related) decisions creates implementation and co-ordination issues, as does the over-politicisation of local life. Moreover, the municipal assembly elects its own chairman and deputy chairman – their roles are connected mainly with the organisation of the work of the assembly and supported by the assembly office.

The right of the mayor to establish necessary local administrative structures is limited – the law sets the concrete limits for the number and structure of those people employed by the city hall. It is defined by law that the number of officials in the city hall should not exceed 13,¹⁷ including the mayor (except for Tbilisi). The number of staff, including contracted employees, is also regulated by law. The Georgian system of municipal administration does not provide rules for the appointment of municipal staff who are not permanent civil servants – as in any country such a gap does not foster merit-based appointments.

REPUBLIC OF MOLDOVA

According to the constitution and legislation in force, the local government system in the Republic of Moldova is organised into two levels. The first level includes villages (communes) and cities

16. Minimum expenses are set at 200-250 Georgian lari (GEL) and maximum expenses at GEL 500-650 in some municipalities.

17. According to paragraph 52 LSGC, the officials of the city hall (*Gamegoba*) are the mayor/*gamebeli*, first deputy mayor, deputy mayor, heads of the structural units.

(municipalities). The second level includes districts (*rayon*¹⁸), the municipalities of Chişinău and Balti, and Autonomous Territorial Units with Special Status (ATU *Gagauzia*). The authorities of the local public administrations from villages and towns are elected local councils and mayors and at the district (*Rayon*) level there is an elected district council and the district president. The Electoral Code establishes the election method of local councils and mayors (see Annex 1). The Status of Local Elected Officials Act and the Local Public Administration Act regulate the legal status and organisation of the work of elected representatives from the local authorities in the Republic of Moldova.

Local councillors and mayors are elected directly for a period of four years.¹⁹ The local elections are valid if at least one-quarter of registered voters participate in elections. The election takes place based on the lists presented by the political parties. The right to nominate candidates for local elections belongs to political parties, registered social-political organisations, electoral blocs and independent candidates.

The same person cannot run in several electoral constituencies of the same level. The local/district council elects vice-mayors, presidents and vice-presidents of the districts. A mayor can be dismissed on the basis of a local referendum, while vice-mayors can be dismissed by the decision of the local council by a majority of votes. Presidents and vice-presidents of the districts are dismissed by decision of the district council by a vote of two-thirds of the elected councillors, based on the proposal of at least one-third of the councillors.

The position of mayor is a full-time paid job and the salary is prescribed by the Salary System in the Public Sector Act, for a nominal amount (because of this issue the Act is rather frequently amended). The local council members are entitled to compensation for their

18. A *rayon* (also *raion*) is a type of administrative unit of several post-Soviet states. The term is borrowed from the French "*rayon*" (meaning, *inter alia*, "department") and is commonly translated in English as "district".

19. Informally it is possible to say that the proportional election system refers to elections of local and "rayonal" councillors. However, the Electoral Code of the Republic of Moldova does not mention anywhere that the country has a mixed electoral system: accordingly, the statement that councillors are elected based on a proportional system and mayors elected based on a uninominal system is legally invalid.

activities and their employers must provide them with effective conditions to serve as local deputies.²⁰

The functioning of local authorities is regulated by many relevant normative and legislative acts that do not make a clear delineation between local public authorities at different levels. Because of this, much confusion can arise regarding the responsibilities over different competences.

The right of mayors to establish necessary administrative structures is not fully respected either in legislation or in practice. Although mayors can form the executive (mayorality) bodies, the staff and the number of public servants are endorsed by the State Chancellery and by the district finance department of the Ministry of Finance (local authorities can hire the necessary extra personnel, if they have sufficient financial resources to pay salaries, however, this is really only possible for large cities).

UKRAINE

The system of local self-governance in Ukraine has three levels – oblast (regional), rayon (district) and municipal (see Annex 1). The core legal basis determining the roles and functions of local elected representatives is to be found in the Constitution of Ukraine adopted in 1996, the European Charter of Local Self-Government, the Local Self-Government Act, the Local State Administration Act and the City of Kyiv Act.

The local self-government structure at the municipal level is based on the model of the ‘strong mayor’. Mayors are elected directly for a five-year term; they are simultaneously the highest officials of the territorial community, the heads of the local council and the heads of the system of executive bodies (administration). In this way, the mayor combines the representative power, decision-making and executive power at the local level.

The local council is elected directly for the five-year term by the majority system (for half of the councillors) and by the proportional

20. Such compensation is very unequal between municipalities – in some cases, like Chişinău, they may receive more than 100 EUR for one day of participation at the council meeting, but most local councillors receive around 5-10 EUR per day of session.

system (for half of the councillors), except for village and settlement councils, which are elected only by the majority system.

The LSG Act stipulates that mayors and councillors can be dismissed by local referendum, but this right is not currently executable, due to gaps in the main law on referenda – citizens have the formal right to dismiss a directly elected mayor by means of a local referendum, but the main law on referenda does not include paragraphs about local referenda, so a local referendum cannot be currently realised.

The position of mayor is a full-time job and mayors receive a salary, but the criteria and processes to establish their final salaries are opaque. The national legislation does not provide any instructions on reimbursement for council members, but local councils can reimburse on the basis of resources of the local budget (in reality this does not work and even committee heads are not reimbursed); in addition, employers must provide them with the necessary conditions to enable them to serve as local elected representatives.

The system of relations between the council and its executive bodies provides the council with control over the activities of executive bodies and mayors, but in the situation where the mayor and the majority of the council are representatives of one political party, such control is absent in practice. In other cases, when the mayor and the majority of the council are representatives of different political parties, it is a prerequisite for conflict between them.

Formally, the mayor is accountable to the territorial community and responsible before the relevant local council, which can make a decision of no confidence in the mayor. The local council is also entitled to abolish acts of the executive bodies, in cases of contradiction with the Constitution or the laws of Ukraine, other legislative acts, or the decision of the council. There are cases, in particular, where the council has repeatedly refused to approve the proposed structure of the executive bodies.

The system of local government is characterised by the influence of political parties since (before 2015) half of local councillors (except for village and town) are elected on a proportional basis. Such influence may have a different effect. On one hand, if the majority of the council coincides with the parliamentary majority, it allows them to receive certain funding (in terms of centralisation of the budget system).

Otherwise, local councils do not receive adequate funding (this has been clearly confirmed by the practices in 2010 - 2014).

Each LSG has the ability to define its administrative structure, in order to adapt it to local needs and to ensure effective management. The Law on local self-government requires only the creation of executive committees of local councils. Besides that, the council, in relation to the proposals made by the mayor, forms other administrative bodies.

3. Core legal and implementation issues determining the execution of roles and functions of elected LSG representatives

The country reports and interviews highlight a number of legal and implementation issues connected with the execution of roles and powers of elected self-government representatives. In this part of the study, the most important issues are listed based on the country-by-country principle.

ARMENIA²¹

The main messages from all dialogues and meetings held during the assessment period were connected with the role of mayors and fiscal decentralisation. The following main gaps were identified on the bases of content analysis and direct research.

Core legal problems

(a) Division and scope of responsibilities

The LSG legislation²² includes many legal problems that complicate the execution of roles and responsibilities of local elected

21. The information about the situation in Armenia was provided by the country report where secondary data analysis is supported by the direct primary research. The adapted version of the project questionnaire in Armenia was sent to around 30 stakeholders matching sampling of the research, including 15 mayors, 7 experts who are representatives of NGOs interested in the development of the LSG sphere, as well as community councillors, municipality chiefs of staff and financial officers (10). Fifteen respondents gave feedback by filling in the electronic version of the questionnaire. The collected data was generalised and analysed. The author of the country report also had personal discussions with city mayors, a regional governor, officials and employees from governors' offices and representatives of the Ministry of Territorial Administration and Emergency Situations. These discussions revolved around the authorities of community, mayor and council, as well as the possibilities of their appropriate application. The expressed ideas, observations and attitudes were recorded in written form. The expert also moderated 10 focus groups in April-May 2015 in the frames of USAID project: "Support to Social Sector Reforms in Armenia".

22. Based on the Constitutional changes adopted in 2015 (new draft laws on the territorial division of the country and on local self-government have already been

representatives, such as unclear regulations defining the powers of public administration bodies and the way in which they are exercised (especially the relationship between LGUs and central government bodies) and the criteria for supervision of the delivery of services.

Certain competences are given to the mayor and the community council, but this allocation is in many cases unclear. Some formulations are vague²³ and the actual powers covered are not clearly prescribed. The competences/authorities of mayors should be exclusive, thus the scope of mayors' competences/authorities defined by law needs to be revised by outlining the frameworks of mandatory authorities. The competences of the community council and mayor in some areas, such as the organisation of road traffic, provision of security, and installation of facilities and other technical matters, are not co-ordinated with sectoral legislation. There are no clear mechanisms allowing the mayor and council to supervise delivery of services (electricity, water, gas supply, tax services, operation of the land register, and the like) by non-municipal entities operating in the community and, if necessary, to intervene in their activities, including by means of providing qualified local staff. The LSG legislation does not clearly distinguish between own and delegated responsibilities, especially regarding rules concerning the financing of delegated responsibilities.

(b) Finance

The LSG competences/authorities and financial resources for their implementation are not inter-linked and allocations are unpredictable. In particular, the LSG legislation on budget formation does not provide real opportunities for the proper exercise of the authority of both mayors and councils as established by law. It reserves rather costly mandatory powers for LGUs (for instance, pre-school education, culture, housing and utilities, and environmental protection), which

submitted to the Parliament), important changes are in the process of being made on legislation concerning local self-governance.

23. For example: "the Chief of a Community shall exercise the following voluntary powers – assist military service calls, military assemblies, periodical military training; assist the civil defence authorities in their activities; take measures for the social security of the families of military servants, assist demilitarised persons and war veterans with the solution of their social problems; assist in military and patriotic upbringing of the population, especially young people".

are financially difficult to implement for most communities, although the conformity and financial means of LSG powers are directly required by the constitution (Article 107) and the LSG Act (Paragraph 3 of Article 9). According to 2013 data, the portion appropriated in the country's consolidated budget for community budgets 9.6% in revenue, and 8.8% in expenses, and the share of total municipal budget expenditure in the country's GDP was 2.41%. Financing of delegated powers of LSGs is regulated by legislation; however the State actually has actually been financing only some of them.

Core implementation issues

(a) Relation to deconcentrated state administration and to the central state

As a consequence of the absence of legal and financial grounds for territorial administration on the one hand, and inadequate LSG functioning on the other hand, decentralised state administration bodies gradually penetrate into the LSG domain, greatly increasing the level of centralisation of government and obstructing the development and strengthening of LSG. Although the powers/competences/authorities of community councils are defined by the LSG Act, in practice they are carried out either incompletely or in a distorted way. This situation is exaggerated by the fact that there is a lack of procedural documents (guidelines) defining concrete patterns of interaction between LSG and decentralised state administration.

Another concrete problem related to the relationship between the LSGs and the central state is an unfair and unclear system of government oversight. This is especially so in the case of the department of control of the Ministry of Finance which often artificially expands the scope of its work to cover the utilisation of own funds, land allocations, and other matters, while the vast majority of the LSGs are still unaware that this is inconsistent with existing legislation.

(b) Finance

The missing link between the scope of responsibilities and the amount of available finance is the fact that the unit costs of provided services are unknown. There are no mechanisms to collect this necessary information and to link it with fiscal decentralisation processes. Community mayors still have serious difficulties in collecting community revenues. Small and middle-sized communities, in particular, accumulate arrears from land tax, property tax and local fees. The reasons for this problem can be found in legislative, administrative and personal dimensions. Local governments have rather limited administrative capacities to execute this task and this is exaggerated by the lack of guidelines and methodologies needed to support the tax collection process. Another problem is unclear criteria for earmarked allocations (“subventions”) from the state budget.

(c) Quality of local democracy

The institution of the community council in Armenia is weak²⁴ not only because of the narrow scope of these authorities as prescribed by legislation, but also because of their inadequate institutional capacities (including politicisation and low citizen participation).

Community council members frequently have limited understanding of their roles in community life and may not take any initiatives on their own. The activities of the community council are highly influenced by the community mayor, for example, during elections council candidates are frequently nominated from the mayor’s neighbourhood. The LSG Act includes the regulating and promoting of residents’ participation in local governance, but the implementation of this is lacking.

24. According to some interviewees, the institution of the community council in Armenia is weak in small and medium communities, whereas in comparably big cities they are competent and sufficiently active. Competent community councils exist generally in big cities where competent and professional council members exist. This is particularly the case in the council of the city of Yerevan.

d) Division and scope of responsibilities

In some cases unclear definitions and a lack of guidelines create a dichotomy at the LSG level. Unnecessary disputes between the mayor and the council are related to the execution of several functions of the mayor, such as presenting the four-year community development programme to the council for approval, appointing and dismissing the heads of community budget institutions, and the management of municipal property. Because of unclear legislation and a lack of guidelines, the decision-making process is poorly organised.

AZERBAIJAN²⁵

Local democracy has not yet been developed to the standard required by the ratification of the European Charter of Local Self-Government and systemic changes in LG law are necessary. This is why we focus only on selected aspects of local finance and conditions of office of elected representatives.

Despite the fact that the scale of municipal own competences is very modest and that fiscal decentralisation is at an early stage, the legal basis provides for full-time employment of a certain proportion of elected members of the municipal council. Such a situation is rather unusual and has financial, legal and implementation problems connected to it.

First, such arrangements mean that the wages of employed elected local representatives (and obligatory administrative staff) may represent a huge proportion of the municipal budget and limit the chances for financing local public services.

Secondly, according to Article 8 of the Basis of Municipality Finances Act, the wage expenditure of municipalities cannot be more than 50% of municipal budget expenses. This limitation creates serious problems for those municipalities with weak finances. According to the law, even in the smallest municipalities, at least two municipal elected members and one municipal servant (accountant) working on a permanent basis must receive a salary above (or equal to) the minimum wage standards adopted by the national government.

25. The data about Azerbaijan are mainly secondary research data; only a few interviews were undertaken by the national expert because of limited time.

Given the minimum wage level of each person is approximately 60 EUR (105 Azerbaijani manat (AZM)) according to the law, then the required amount from the local budget for the wage payment of three municipal personnel would be nearly 4000 EUR (with the inclusion of the mandatory social fund payment) per year.²⁶

However, the analysis shows that the overall budget of at least 70% of municipalities in Azerbaijan cannot cover such wage expenditure, meaning that if the 50% limitation is applied, only one person can get a wage that meets the minimum requirements.

Municipal elected representatives are entitled to a special status based on their mandate. According to civic law, municipal members are considered to be official representatives; however the law does not identify the municipality as a permanent workplace for all elected members. The pension and health insurance of the elected members of municipalities are defined on the same basis as for ordinary citizens, not like other officials and elected members. This means that there is no regulation mechanism envisioned in the law regulating the status of elected members of municipalities. The second issue is social security status after the end of a period as an elected representative. The lack of sustainability of financial guarantees may create a series of problems in the future concerning social security issues (for example, calculation of pension).

BELARUS²⁷

In Belarus, the problems related to exercising the roles of elected self-government representatives have a systemic character – all local powers are still given to the state administration bodies (executive committees).

The core issue related to the role of elected representatives is the concept of subordination at all levels of local government – legally and practically. For example, whatever budget decisions are made by elected local self-government representatives and regardless of their actions, the result would be approximately the same. All additional funds received in excess of the income amount determined in

26. Salary, expenses on labour force. State Statistics Committee (2013).

27. The data about Belarus are mainly secondary research data; only a few interviews were undertaken by the national expert because of limited time.

accordance with the state standards, will be forfeited in favour of the central government, and the central government would also pay compensation in the case of insufficient funds. Another example is the combination of the position of the mayor (self-government) and executive council chair (state administration) at the lowest level.

The responses of fourteen stakeholders collected during the research phase (questionnaires) clearly indicate that local self-government is formally stipulated by the legislation, but it is not separated out of the governmental authorities system. So, local councils do not have their own executive agencies; a council chairman is not an independent political figure; there is no property in the council's balance sheet, it does not have a bank account; a council chairman's powers and authorities are mainly formal in nature and the chairman can only influence internal organisational issues; there is an absence of equal, free and transparent elections; the activity of deputies and of their councils depends on central government and local executive agencies, while the council chairman is dependent on an executive committee chairman from the organisational point of view; there is de facto interference by central and executive authorities in the work of councils, their deputies and chairmen; and finally the forms of direct democracy, stipulated by the legislation, are not functioning in practice, as they are over-bureaucratised and have no funding allocated.

GEORGIA²⁸

Based on the secondary analysis by the national expert and responses received from questionnaires and interviews, the following text lists the main legal and implementation issues related to the roles and functions of local elected representatives.

28. The information about the situation in Georgia was provided by the country report where secondary analysis is supported by the direct primary research. In total 10 stakeholders responded to the project questionnaire.

Legal problems

(a) Mayor – council relations

Pursuant to the LSG Code, a vote of no confidence may be declared on directly elected mayors and they may be dismissed from office. Six months prior to and six months after local elections, no procedure of dismissal of a mayor is possible. Article 51 of the Code entitles the council to declare a vote of no confidence vote in a mayor, who is directly elected by a majority of voters. Support of two-thirds of the council members will be sufficient to exercise this power. 20% of voters can also request a declaration of a vote of no confidence in a mayor. This provision leads to conflicting attitudes, especially because the Code grants a council the right to declare no confidence in the mayor without the determination of any legal grounds. It is also questionable how the procedure really reflects the interests of the local residents – in the case where 20% of voters initiate the procedure, the decision of the council is unpredictable, since there is no legal basis on which the decision of the council is to be made.

Respondents also revealed the fact that within local executive branches, individual members of the local council have limited accountability/control. However, this is not legal gap: as a member of the council, individuals have the right to pose questions to and get answers from those officials accountable to council (mayor, deputy mayors and the heads of the structural units of the city hall); the detailed procedures are regulated by the statute of the council.²⁹ In addition, the council member can monitor the activities of executives through the commissions and fractions of the council. They can also execute their powers with a certain number of fellow councillors.³⁰

(b) Finance

Several problems are related to the finances, both from the point of view of a lack of necessary resources to cover all responsibilities, but also from the point of view of limited freedom of local self-governments to manage their own finances. (The core legal issues are the limited right to borrow and to invest).

29. (See Article 45, paragraph 1 (A) of the Code).

30. For example, one quarter of council members have the power to request a submission of the special report to the municipal council on the work performed by the Mayor (See article 54, Paragraph 1 (B.A))

Implementation issues

(a) Mayor – council relations

Both interviewed mayors and those mayors asked to complete the questionnaire share the opinion that they are not the real highest ranked authority in the municipality, as they claim that every step has to be discussed and adopted by the council, which also has the right to announce a vote of no confidence in the elected mayors. In their words, they have quite high legitimacy as they have been elected by the citizens of the whole municipality, but in reality their rights are limited.

On the other hand, the fact which some council members have simultaneously indicated is that they do not have proper authority and influence as members, especially if they represent the opposition. This indicates that the current legal arrangements, in combination with the politicisation of local life, create important implementation problems and may lead to unnecessary disputes between mayors and councils.

Despite the fact that Article 45 in the Code states that the local councillor has the right to put questions to the mayor and the mayor has an obligation to answer within seven days and the councillor also has the right to meet with the responsible authorities before the council without barriers, opposition members of councils stated that they have problems with communication with the mayors and with arranging meetings with mayors to discuss local needs and priorities (mayors select with whom to consult and discuss and with whom not to do so).

Such contradictory statements just reveal that the change – direct election of mayors – is very recent and more time for its full implementation and understanding is necessary.

b) Finance

The central government has promised many times to introduce improvements to the Georgian fiscal decentralisation system and from 2014, LSGs are expected to receive shares from the income tax revenues. This change was postponed to 2016.

The functioning of a joint treasury institute is also considered to be a contentious issue. As one respondent stated, the state treasury can

decide whether the monthly expenses of a certain municipality are too high and can refuse to realise the requested financial operations. Such regulation is not based on any legislative act, but only on the instruction adopted by the Minister of Finance (#424). However, the competence of the Ministry to issue this type of instruction is not formulated by a law and in particular, is not reflected by the LSG Code. This regulation requires that the local government, and every organisation which is controlled by LSG, should send the payment documentation to the appropriate financial department, the financial department will approve and send the payment to the state treasury; the state treasury processes the registered payment and sends it to the interbank system for withdrawal. The system of calculation of unit costs for public services does not exist, so all discussion in regard to suitability of resources allocated to local governments is not evidence based. The equalisation mechanism is unclear, thus the shortage of local financial revenue makes LSGs heavily dependent on central government.

The Ministry of Finance, in certain cases, imposes spending priorities on municipalities. The free exercise of the functions of local elected officials, provided by Article 7, is jeopardised by the indirect limiting of the number and the remuneration conditions of elected officials and of local public servants.

(c) Quality of local democracy

Local governments still manage a relatively limited share of public affairs, making them dependent on central government. This situation (and historical path-dependence) may discourage at least some local politicians from being really active

Over-politicisation is very visible at the local level. Political parties have a strong influence on the activity of local governments, both through their factions that are officially a part of the LG system and through the party line. Some council members stated that local elected councils in Georgia are weak institutions per se and they serve as political supplements to elected mayors.

The capacities of local citizens to manage local matters by their own initiatives are rather limited, but from both legal and implementation points of view, the situation is improving step by step. In this regard it should be highlighted that in July 2015, amendments were made to

the LSG Code with the aim to improve the mechanisms for citizen participation in local decision-making processes. In this regard, two new forms of mechanisms were introduced alongside other methods: the general assembly of settlements and the civil consultative council. In every settlement (village, borough, and town) where the number of registered voters is less than two thousand, general assemblies will be created as a form of community self-organisation; where the number of voters is more – the local council is entitled to regulate this issue in the internal regulation document. The general assembly will be entitled to discuss every important social economic issue concerning the settlement. The civil consultative council will be the consultative body of the mayor/gamgebeli; members should consist of representatives of the private sector and non-governmental sector, and citizens. The members will be adopted by the mayor/gamgebeli.

REPUBLIC OF MOLDOVA³¹

Based on the analysis by experts and responses received from questionnaires and interviews, the following text highlights the main legal and implementation issues related to the roles and functions of local elected representatives.

31. The information on the status of local elected representatives from the Republic of Moldova is based on the country report and also on opinions and suggestions of representatives of local and central authorities. Opinions of those representatives were collected applying the methods of questioning and of interview. To achieve questioning and interviews the local experts have benefited from the help of the Congress of Local Authorities in Moldova (CALM). In the period, 27-29 April 2015, with the support of this body and the Association of Communes from Romania, Chişinău hosted an international conference with the participation of over 100 mayors and local elected officials from the Republic of Moldova and Romania. During this event 15 mayors/local councillors were interviewed. The questionnaire was prepared and sent by email to 10 mayors/local councillors. Only two mayors returned completed questionnaires. Questioning of central government representatives and academia experts was achieved by applying the individual interview method. In total the survey covered 21 people, including 17 mayors, two councillors and one representative from the central public administration and academia.

Legal problems

(a) Division and scope of responsibilities

LG law states that local self-governments have full and exclusive competences. However, the majority of the existing relevant normative and legislative acts do not make a clear delineation either between the local public authorities at different levels or between the characters of their competences. Because of this, multiple confusions appear regarding who has the obligation to fulfil the competences, how to finance the competences, etc. Certain laws often use phrases such as "local public authorities", without clearly specifying the level. The fact that the laws do not define the specific level of authorities in accordance with their competences creates confusion in their implementation. For instance, the Road Networks Act requires the maintenance of national roads by local public authorities, but does not provide detailed recommendations in this regard.

Provisions of different "branches" of law contradict provisions of LSG law or interfere with each other. Here are few examples of this. The Public Property of Administrative-Territorial Units Act (Article 14) permits government interference in the inventory of LSG property. The Administration and Denationalisation of Public Ownership Act (Article 17 paragraph 7) sets out the obligation of local public authorities to use funds received from the lease of municipal property exclusively for the development of municipal enterprises/commercial companies, forcing local councils to take such decisions. Similarly, Article 18 paragraph 4 establishes an obligation to reinvest the assets obtained from the sale of unused assets in enterprise development. The State Regulation of the Land Property Regime, State Land Register and Land Monitoring Act (Articles 10, 11 and 15) requires each LSG to keep the land register and to carry out related activities, but such obligation is not part of LSG law and is not recognised as an LSG responsibility.

(b) Mayor – Council relations

In many laws, the powers of the mayor and the local council are not clearly defined, as the laws simply delegate the jurisdiction to "local public administration authorities". For example, according to Article 14, "the Local Council manages the public and private goods of the village and city (municipality)". However, according to Article 30, the

mayor possesses the same competences: "the mayor is responsible for management of the public and private goods of the village". The fact that the laws do not clearly explain who owns the responsibility generates conflict between councils and mayors.³²

c) Finance

Despite the fact that the Republic of Moldova has the highest level of fiscal decentralisation in the EaP region (the share of own revenues in local budgets is around 15-20%) and that a lot improved during 2015 in the area of local finance, through the implementation of new legislation, certain financial arrangements still make LSG authorities dependent on central public authorities (limiting the capacity of local elected representatives to execute their roles and responsibilities). An example of this is the hierarchical dependence on the distributive policies of the Ministry of Finance and other ministries which manage different funds (Ministry of Environment, Ministry of Transport). Such dependency is a factor for political influence, where the unclear split between financing of own and delegated responsibilities allows central government to interfere with the structure of LSG spending priorities.

Another identified issue is the tax exemptions decided by the central authorities that affect local government, without any compensation. The interviewed local elected representatives also mentioned the problem of the collection of personal income tax at the place where the person works, not at the place of domicile.

(c) Quality of local democracy

Contradictory legal regulations regarding the term of mandate, incompatibility of local elected representatives, suspension of mandate and removal from function, in conjunction with the lack of criteria for the election of local elected officials, lowers the quality of the local councils' performance of activity and allows central government the "power" to interfere, acting through a large bureaucratic system.

32. The Law on Local Public Administration no. 436 of 2006

Implementation issues

(a) Division and scope of responsibilities, relations between state and self-government

The multiple responsibilities established by multiple normative acts, laws, regulations, as well as government decisions, causes local public administration authorities to confuse their basic tasks with the delegated ones, thus making it difficult to identify the competences that come into conflict with the areas of responsibility of the local public administration. As a result, 70% of local representatives mention that they have faced difficulties when they were obliged to perform activities that were not included in their areas of responsibility and that the resulting expenditure frequently exceeded the planned local budget.

The relations between the public authorities at different levels are excessively bureaucratic, creating a situation of marginalisation and subordination of local authorities to the central level. Analysis of the legal framework and the practice of local authorities' activities attest to the existence of many obstacles and problems in the effective implementation of the rights of local elected officials to solve problems in their communities, to ensure the administration of local affairs and to provide public services of the necessary quality. Some relevant examples are provided in the following text.

In accordance with the legislation in force, the local council approves, on the mayor's proposal, the mayoralty's organisational chart and the members of the subordinate public structures and services, as well as their staff remuneration scheme. The law does not provide that the organisational chart and staff list must be co-ordinated with the government – this limitation was abolished in 2012. Although the law sets out the full right of local and district council staff to determine the necessary number of members in their organisations and institutions, in reality, under the current system of public finance, local authorities are obliged to co-ordinate with the Ministry of Finance and with the State Chancellery in regard to the number and salaries of staff employed in town halls and district councils.

Also, at present, the state establishes single rates of remuneration for the positions paid for from the local budget, including the local public administration officials. This legally provided practice, which limits the

number of municipal staff and controls their wages, contradicts the principles of local autonomy and local financial autonomy.

Probably the most important implementation problem is the state oversight over LSGs. According to the law, 'legality control' refers to both own and delegated powers, while 'opportunity control' refers only to delegated responsibilities. In reality, LSGs are subject to far too many state inspections and in many cases opportunity controls also deal with LSGs' own competences.

(b) Finance

Despite the fact that the Republic of Moldova spends a significant proportion of public expenditure at local level, several interviewees have mentioned that financial resources are not commensurate with the responsibilities provided for by the law, their local financial resources are inadequate, and they are unable to deal with them freely within the framework of their powers. The competences of local authorities were established only formally, without defining the sources of financial resources. Thus, the local authorities are entrusted with competences over which they do not have the necessary financial and/or human resources or appropriate capacities for implementation.

Another issue is the allocation from national funds (environmental, road, etc.). Usually, the allocation of finances from these funds has political implications, as decisions are adopted by taking into account the political affiliation of mayors, without considering other relevant criteria. This makes local authorities politically dependent on central structures.

(c) Quality of local democracy

The country report indicates that there are some doubts regarding both main pillars of local democracy. Elected officials and employed staff lack some necessary skills, and citizen participation is limited. This situation, together with the already mentioned "powers" of interference of central government (characterised by partisan policies and acting through a large bureaucratic system) limits the "quality" of local governance and makes LSG at least partly dependent on the political will of the central administration.

UKRAINE³³

Based on the analysis of experts and responses from questionnaires and interviews, the following text highlights the main legal and implementation issues related to the roles and functions of local elected representatives.

Legal problems

(a) Division and scope of responsibilities, relations between state and self-government

The distribution of competences between the state and local self-government is not properly defined by the constitution, which allows (depending on the concrete political situation) the government to centralise administrative competences (for example by means of by-laws). The issue is the incompleteness of organisational and legal autonomy: local authorities do not have discretion to use their initiative concerning any matter which is not excluded from their competence nor assigned to any other authority. Powers given to local authorities are not full and exclusive; there is a duplication of powers of local self-governments and local state administrations: the Self-Government Act (Articles 27-38, 43, 44) and the Local State Administrations Act (Articles. 17-25).

Delegated responsibilities are not delegated to the decision-making body (council), but to the executive body (committee) instead. Regional and district councils do not have their own executive bodies, so local affairs at this level are managed by state administration bodies in reality. Some particular issues can be mentioned here, too. In cities, local authorities are not able to influence urban construction because of excessive centralisation of licensing and control functions in the areas of architectural control

33. The information was collected by the country report and by the direct research organised by the local expert. In the period from 20 April to 10 May 2015 the questioning of the elected local deputies, mayors, and representatives of the political parties, NGO and universities was conducted. From more than 100 questionnaires we received 36 replies, including 20 local councillors (15 of the first level, 5 of the second and the third levels); 8 mayors; 2 representatives of the political parties (one of them identified himself at the same time as a councillor); 2 university professors and 5 officials of local self-governments. In addition, a focus group with the deputies of Lviv City Council was conducted.

(urban development), land records and control over their use (this problem is addressed by the Decentralisation in the Sphere of Architectural and Construction Control Act which came into effect on 1 September 2015). As already indicated, the right to hold a local referendum is a part of LSG law, but is not applicable in practice. An interesting issue is the existence of "black holes", i.e. areas without self-government jurisdiction, namely, land outside the borders of the city, village or settlement. These areas are not under the jurisdiction of any local community, so they are managed by the state administration.

(b) Mayor – Council relations

Similar to Georgia, directly elected mayors can be dismissed by a vote of no confidence by the local councils. The wide-spread practice of their dismissal by a vote of no confidence in 2011 – 2012 should be noticed as negative practice example.

(c) Finance

Local authorities do not have adequate financial resources of their own to dispose of freely within the framework of their powers. The recruitment of highly qualified staff on the basis of merit and competence is not allowed by the conditions of service of local government employees. Another issue is the lack of real local financial management autonomy (management of the specific financial resources of local self-government), due to the impact of the government on local budget expenditures through the State Treasury (Budget Code). The absence of effective internal and external audit/control systems within the local self-government system is also significant. The equalisation mechanism is unclear (moreover, in 2015 the amount of resources distributed via equalisation was close to zero – a financial tool which was aimed at motivating planned voluntary amalgamations).

Implementation issues

(a) Division and scope of responsibilities, relations state and self-government

Excessive numbers of delegated powers of the government, within the structure of the executive competence of local authorities, allow the central government to control local administrations and intervene in

the activities of executive bodies of local councils (a result of excessive reporting and duplication of functions). Likewise, unclear legislation creates difficulties with the distribution of powers and tasks between the local council, mayor, administrative bodies of LG and local state administration.

(b) Finance

In addition to the issue of limited resources, respondents have mentioned the issue regarding improper interference by the Treasury in local financial management. The Treasury controls the accounts of LSGs and can delay or even refuse any payment approved by LSGs (even in cases when an LSG has enough resources in the account). According to the respondents such Treasury decisions are not transparent or predictable, thus creating a negative impact on local governance (the relevant law was amended recently).

(c) Quality of local democracy

There is a problem of an over-strong political dependence of local councils on the leaders of political parties (for example, at least partly because of the current electoral system, deputies are guided not by personal convictions but by the attitudes of political parties on voting). The attitudes to such influence are to some extent determined by the electoral system (majority or proportional) on which a councillor was elected.³⁴ Majoritarian deputies noted the negative impact of political parties in cases when proportional deputies vote against their beliefs and local interests, but in favour of the positions of political parties, which may not take into account the interests of local communities. In addition, the practice from 2010 to 2014 indicated that local councils with a majority of members of pro-government parties have received substantially higher funding than those councils which had a majority of members from opposition parties.

34. The situation may change following changes in the electoral law.

4. Overview of main strengths and weaknesses

This part summarises previously described findings in more details (where relevant, the situation is benchmarked with the Charter principles – see boxes). It focuses on defining the core issues that are common for the whole region. Where necessary, it also indicates the important problems related to specific countries. The data collected for this report illustrate that many legal and implementation issues are limiting the chances of local elected representatives to deliver a genuine modern local and regional self-governance in countries of the EaP. The core issue is finance – only the Republic of Moldova introduced a relatively functional system of fiscal decentralisation. However, many other crucial problems connected with the division of responsibilities, the relations between public bodies and also with the limited quality of local democracy are evident.

4.1 Local finance

a) Inadequate funding and inadequate funding system

Article 9.1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

Article 9.2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

Article 9.7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

Article 9.8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Two core terms are included in the Charter principles:

- a. “adequate”,
- b. “freely dispose ...”.

The potentially complicated term “adequate” was recently discussed by the Congress in great detail in its Report CPL(27)final “Adequate financial resources for local authorities”.

The issue of insufficient financial resources or funding is underlined in all country reports, interviews with and responses of different stakeholders. Local government representatives from all countries claim that available resources do not cover the expected scale of responsibilities. Moreover, their opinion is that the costs of delegated responsibilities are not fully recovered. These opinions can be confirmed by “hard” data. In Azerbaijan, local finances almost do not exist (according to the Congress CPL(27) report, the average per capita municipal income in Azerbaijan amounts to five EUR per year and the total local government revenues are less than 0.14% of the consolidated state budget). The situation in Armenia is just slightly better – according to the World Bank Public Expenditure Review 2014, sub-national entities accounted for about 3% of the consolidated budget expenditure in 2012). The low percentage of GDP spent at local level (in combination with the low GDP level in comparative perspective: GDP per capita in purchasing parity) results in the permanent under-financing of local government needs (limiting thereby the chance of local elected representatives to execute their roles and responsibilities).

Only the Republic of Moldova³⁵ spends a relatively significant percentage of its GDP at the local level. According to the data of a recent June 2013 World Bank report (Moldova Public Expenditure Review), the central government expenditure (excluding social funds)

35. In Belarus, the situation is unique – most local expenditures are realised by decentralised state administration/executive committees. Local authorities (councils of deputies) are financed from the local budget to cover the costs for organising and carrying out sessions, for staff salaries and other expenses related to the performance of their duties and the implementation by deputies of their powers. The specific statistics on the volume of allocated funds for these purposes is not available, but it is clear that their share in the consolidated state budget is very small. Existing statistical sources do not distinguish for this dimension.

contracted from 16.8% of GDP in 2009 to 14.5% in 2013. Over the same period, sub-national expenditure declined from 10.8% of GDP to 8.8%. Such data indicate a relatively large level of fiscal decentralisation. However in the Republic of Moldova, because of the low economic performance of the country, the available real money is insufficient to finance the expected local needs and delegated responsibilities.

Furthermore, all EaP countries reported insufficient financing of delegated responsibilities. This should be the reality, but today it is impossible to confirm such statements by hard data – no country runs an updated accounting system allowing exact calculations to be made regarding public service costs (accrual and cost centres/full costs accounting).

The freedom to use local financing is at least partly limited in all EaP countries. Again, the best situation is in the Republic of Moldova, but even here the stakeholders report significant political interference in local spending patterns. In some countries, the government (at different levels) imposes spending priorities on local governments, or controls local spending by way of different mechanisms. Earmarking of most grants and transfers limits the chances of local elected representatives to decide about local priorities. In 2015, Ukraine provided almost 100% of allocations by earmarked transfer. However, it may have been a temporary arrangement in order to motivate mergers of local authorities.

Local authorities' freedom to manage their own finances is linked to the above issue of funding. In most countries, the opportunity for local governments to borrow is rather restricted and is controlled by the state. Also, in some countries like the Republic of Moldova or Ukraine local governments are obliged to keep their accounts at the Treasury. This can be acceptable as a mechanism but such systems significantly limit the possibility for municipalities to gain interest rates from the commercial banks.

(b) Insufficient own resources

Article 9.3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

Real local taxation, involving the right of local authorities to determine rates and priorities on the basis of local needs, does not exist in the region. From a regional point of view and in terms of practice, the Republic of Moldova is the best example, but the local authorities should have a better chance to influence local tax revenues. Not only our data but all existing analytical studies indicate that the structure of revenue of local governments in the region is almost fully centrally determined. Tax incentives or disincentives are impossible.

(c) Ineffective equalisation

Article 9.5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

Article 9.6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them

According to the Charter and all Congress explanatory reports, local governments should be partly compensated for a lower than average tax base and higher than average expenditure needs. The equalisation formula should be transparent and include parameters such as:

- the number of inhabitants – the level or amount of 'own revenues';
- the local authorities' share of central (or regional) taxes;
- the average cost of particular tasks and functions.

Such a system is almost fully established in the Republic of Moldova. In Georgia, the equalisation system is based on a specific formula incorporated in the budget code of Georgia; however, the Georgian authorities plan to modify the equalisation system making it fully adequate to the needs of municipalities. In other countries equalisation systems (if any) are non-transparent and non-predictable. In many cases, the amount of grants/transfers given to local governments is not based on needs or revenue capacity, but on political relations.

4.2 Conditions of the office of local elected representatives

This issue is partly connected with finance. It deserves specific attention, including from the point of view of the current discussions within the Congress (see scheduled Report on Conditions of office of local and regional elected representatives).

Article 6.2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7.1 The conditions of office of local elected representatives shall provide for free exercise of their functions.

Article 7.2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

Following the principles of the Charter and the current discussions in the Congress, conditions of office of local authorities include at least the following dimensions:

- eligibility (because of the character of the EaP region we do not include demography);
- recognising and rewarding local elected representatives;
- supporting local elected representatives;
- integrity and independence of local elected representatives;
- leaving office.

From the point of view of eligibility, it should be mentioned that in most EaP countries only national citizens having lived for a certain period in a given community can be elected. Such approach is in contradiction with the principles applied in EU member states. The criteria of “conflict of interest” determining restrictions on those who can stand for elections differ between countries. The opinion of experts is that some restrictions are too strict.

From the point of view of recognising and rewarding, we can see the following main trends in the EaP region:

- the post of mayor and in most cases a few additional local government posts as well, are treated as professional posts;
- the post of a council member is expected to be a voluntary post.

However, there are important differences. In Georgia, municipalities pay salaries to committee chairpersons, heads of political factions and costs for the execution of the elected mandate are reimbursed to ordinary deputies as well. An extreme case is Azerbaijan (especially if compared with the scale of local resources), where too many local elected representatives are expected to work on an employment basis. In Ukraine local councillors do not receive any reimbursement. The right for local councillors to demand time off from their employers in order to undertake public duties seems to be well regulated in all EaP countries (but it must be admitted that, in reality, this may not function perfectly and can limit their chance to stand for elections).

With regard to the support offered to local authorities, reports and interviews indicate that training possibilities for local elected representatives and local staff are generally limited and technical support from the municipal administration varies.

As far as independence is concerned, all country reports indicate the existence of a top-down approach and political pressure limiting the chances of local elected representatives to serve local needs.

As far as the situation of mayors and local councillors after leaving office is concerned, some reports indicate that major social problems may occur as a consequence (especially in Azerbaijan).

4.3 Relations between state and elected self-governments

(a) Limited scope of local responsibilities and freedom to exercise own initiatives

Article 3.1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

Article 4.2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

Article 4.4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

It is reported by all the countries that the limited scope of local government responsibilities negatively affects the chance of local elected bodies to manage their administrative units. The sectors particularly mentioned are general and secondary education as well as health care and social security.

Moreover, in some countries, especially in Ukraine, the principle of having full discretion to exercise local initiatives with regard to any matter which is not excluded from their competence nor assigned to any other authority, is not provided by law – on the contrary, the responsibilities of local governments are provided in a restrictive way, namely as a closed system of tasks without the right to do more.

Interference between own and delegated responsibilities is a frequently mentioned problem. Legal contradictions, i.e. different legal solutions for the same issue in different laws, are rather frequent and LSG legal rules are not harmonised with one another, especially as regards sectoral legislation.

(b) Freedom to determine internal administrative structures

Article 6.1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

The level of freedom of mayors and councils to establish their own administrative structures is significantly limited by legal restrictions and also by expenditure restrictions. In Armenia, the structure of local government offices and the number of employees is directly determined by the state, while in Georgia these are determined by the organic law, “the code of local self-government”. In Belarus, the number of council staff is determined by the President of the Republic of Belarus. In the Republic of Moldova, on the one hand the law gives

freedom to local authorities to establish their administrative structures; on the other hand there are contradictions with other laws that impose some oversight and limitation of the financial resources necessary for this.

(c) Supervision

Article 8.1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

Article 8.2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

Article 8.3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

In the EaP region, legal practices vary from a Charter point of view (see above). The supervision rules are relatively well formulated in the Republic of Moldova and Georgia. However, all countries report several problems connected with the practice of improper supervision and control of self-government activities. The most interesting case is Belarus, where lower level self-government units are subordinate to higher ones.

(d) Consultations

Article 6.1 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

On this issue, information gathered in EaP countries converges: the level of consultations organised by central government to discuss major changes related to local self-government competences and situations is insufficient, due to the lack or absence of formal procedures of consultation with local and regional authorities and their associations in most of the countries concerned.

The consultation of local authorities by other levels of government, as set out in the Charter, is an important feature of the decentralisation process. The Congress has addressed this issue in its recent priorities and work programme. Following the adoption of Resolution 347 (2012), Recommendation 328 (2012) on the right of local authorities to be consulted by other levels of government, the Congress has adopted Resolution 368 (2014) on Strategy on the right of local authorities to be consulted by other levels of government.

This Strategy presents the purpose, principles and procedures for all stakeholders to help them improve consultation processes. It provides that the right for local and regional authorities to be consulted should be enshrined in law and duly implemented. Local and regional authorities should be given a real opportunity to formulate and articulate their own views and proposals, in order to influence the decision-making processes on all matters that concern them.

4.4 Relations between mayors and assemblies

The country reports indicate that the relations between council members and mayors differ between countries. In most countries, directly elected mayors have real competences and a lot of power. The most obvious examples are Ukraine and Georgia. In these countries the law directly states that the mayor is the highest executive body of the municipality (it should be noted that in Georgia some local deputies stated in questionnaires that the mayor makes decisions on everything). On the other hand, we have the case of Belarus, where the mayor, who is on the lowest level, is also head of the local state administration (executive council) and can be dismissed by the middle level administration (which means that the state administration has more power to decide who will be the mayor than elected local councils).

The most important common message from all countries is that: the functions of the mayor and the local council should be clearly defined in an appropriate legal and procedural way. Any such definition should, however, respect the country's decision as to the preferred type of local democracy, i.e. whether "mayoral" (directly elected mayor is the main local representative) or "representative" (directly elected council is the main local representative).

The specific issue to be mentioned is the possibility of the vote of no confidence in directly elected mayors by local councils (Georgia and Ukraine).

4.5 Quality of local democracy

Central governments like to argue that decentralisation, and especially fiscal decentralisation, cannot be fully attained because local elected representatives are not ready to deliver effective, accountable and responsible local governance. Reports and some interviews/answers of stakeholders indicate that this can be at least partly true, especially in fragmented local government systems such as Ukraine or Armenia.

A very specific issue is the political culture at local level – over-politicisation of local life and the influence of national politics might lead to political polarisation in local society, instead of joint working by all local public officials for local people.

An important barrier to the development and functioning of local democracy in the EaP region is the rather limited citizen participation in local affairs. Such a situation can be partly caused by the fact that the issue of citizen participation in most countries is not sufficiently defined by LSG law. However, the core fact is that citizens, because of path-dependence, are not prepared to function as real and effective defenders of their local rights and interests or as controllers of the activities of local elected bodies. Reports from some countries indicate that local councillors are expected to meet their electorate on a regular basis; however this expectation seems to be just “on paper”.

There are no comprehensive data concerning the level of trust in local governments, but two examples may serve the purpose of highlighting a trend. According to the Caucasus Research Resource Centre, the level of citizen trust in LSGs in Georgia was high in 2009 (almost 50%), but declined to 13% in 2013 (with new LSG and related legislation, the situation may be already improving). Interestingly, the trust in local government in Georgia was much lower in Tbilisi and urban areas than in rural areas. In rural areas, Georgians trusted their local government (40%) more than twice as much as in Tbilisi (17%). Residents of the capital were twice as likely to express distrust in the local government with 28% reporting distrust in Tbilisi versus 12% in rural areas. The situation in the Republic of Moldova is very similar – according to the

Institute of Public Policy barometer of 2015, only 8.4% of citizens fully trust and 34.1% partly trust LSGs (however, the trust in LSG is relatively very high compared with other areas – amongst the four “best” together with the church, mass media and the army).

4.6 Fragmentation and regional self-government

The very specific issue is fragmentation and the existence of higher self-government levels.

Georgia has a consolidated territorial structure (some municipalities were rescaled during the 2013-14 LSG reform) and on the other hand, Ukraine and Armenia represent highly fragmented systems (Ukraine is in the process of running the process of “voluntary” comprehensive amalgamation as from 2015).

Last but not least – a real second level (regional) of self-government with an effective scale of responsibilities, budgets, and professional staff does not exist in the region. Formally, higher levels of self-government exist in Belarus, Republic of Moldova and Ukraine (however, in Ukraine existing elected regional and district councils are still working without their executives) and a one level system applies for Armenia, Azerbaijan and Georgia.

5. Recommendations on strengthening the role and powers of local elected representatives to enable them to better contribute to local democratic governance

The recommendations for further developments in this study are linked to the main problem areas identified in the previous part of this report (the issue of fragmentation is not tackled, given that such an issue needs a genuine national solution to balance the pros and cons)³⁶. The recommendations concern:

1. Local finance: general.
2. Conditions of office of local elected representatives.
3. Relations between the state and elected self-governments and central government.
4. Relations between mayors and assemblies.
5. Quality of local democracy.

To start with, recommendations with regional characteristics are provided – they are more or less valid for all countries involved, but country-specific issues will be added where appropriate. Country-specific recommendations on particular issues are not provided for Azerbaijan and Belarus. Before the establishment of a genuine local self-government system, partial recommendations make no sense (however, this gives both countries the chance to prepare high quality, comprehensive reform changes and, in this way, enables them to limit unnecessary transformation costs and mistakes).

³⁶. The optimum size of a municipality is not known in either theory or practice. Too small municipalities suffer from lack of local capacities and there may be higher unit costs for local services, but large municipalities show a lack of democratic representativeness. All models exist in the real world, so the main issue is not so much about the size, but the proper allocation of functions and finance. Effective inter-municipal co-operation can serve as at least a temporary solution (large scale territorial reforms must be well prepared and balance pros and cons of amalgamation versus fragmentation).

5.1 Local finance³⁷

For the entire region (with the exception of the Republic of Moldova, where central and local levels suffer from a lack of financial resources in a relatively proportional way, but the first steps toward fiscal decentralisation have already been realised) almost all Charter principles related to local public finance will be addressed by future reforms.

1. “Adequate” local financial resources: the percentage of sub-national expenditures is important, but is not a decisive factor. The core task is to link the scale and scope of own local responsibilities to allocated “own” financial resources while respecting the fiscal situation of the country (if the country is poor and has a small public sector, the central level and the local level should be equal from the point of view of

37. The core tasks recommended in this area to **Armenia** by the Congress are as follows:

- to increase the “own” financial resources of local authorities;
- to improve the efficiency of the tax mechanism in municipalities, by allowing them the right to determine the rate within reasonable limits set by law in order to strengthen their autonomy;
- to review the financial equalisation mechanism.

The core tasks recommended in this area to **Georgia** by the Congress are as follows:

- to enhance the financial capacity of local governments, including the capacity to generate their own resources, using all available means including enlarging the tax base;
- to improve the financial equalisation procedure (both as regards distribution and increasing the equalisation fund);
- to revise the existing legislation with an aim to provide standards for the auditing of local self-government entities, and to provide training to experts in local self-government audit, with emphasis on “value for money” audits.

The core tasks recommended in this area to the **Republic of Moldova** by the Congress are as follows:

- to allocate to local authorities financial resources which are commensurate with their powers and responsibilities;
- to permit local authorities to collect more fees and local taxes, in addition to property tax and taxes on built assets;
- to review the legislation governing expediency checks to ensure that they are clearly regulated and restricted, in particular by laying down criteria defining the exact cases in which such checks may be carried out.

The core tasks recommended in this area to **Ukraine** by the Congress are as follows:

- to reinforce the financial autonomy of local authorities and improve the equalisation system, providing a fair and transparent redistribution of funds, based on clear criteria and objectives.

insufficiency). The real costs of delegated responsibilities should be fully reimbursed.

- a. To create such a system, the actual costs of local services should first be established. Without the necessary data, all discussions about “adequateness” can only have a political character. From this point of view we propose the immediate establishment of collaborative benchmarking systems for local governments in all countries concerned, with benchmarking of inputs and outputs as a minimum requirement.
2. The right to the “free use” of own resources: the municipalities receive funds to cover the costs of their own responsibilities from different sources, but must be free to manage this sum of money. The subsidiarity principle states that local bodies comprehend local needs better than the central level. Any direct interference in the local public financial management from the central level should be prohibited legally and in practice. Moreover, the access to capital markets should be guaranteed (some framework rules such as setting the maximum debt level are acceptable).
 - a. However, if real financial management freedom is given to local governments, a system of effective compliance and performance, internal and external control and audit should be established as well.
 - b. In the case of a fragmented system, voluntary municipal co-operation should be promoted as the appropriate tool to cope with limited local resources in small municipalities.
3. The right to manage local taxation: genuine local taxes and fees should represent an important part of local revenues and the decisions about their level should be local decisions (administration of tax collection can be central, such systems exist and function well). A moderate level of tax competition should be allowed by the fiscal decentralisation system.

4. The equalisation system (unconditional grants): the LSG law and/or Budget code should clearly define the rules for the equalisation of the tax base and expenditure needs. The set of indicators used can differ between countries, but must be transparent and predictable. The allocations (including calculations) for all unconditional grants to finance local authorities' own responsibilities should be made public.
5. Conditional grants: these mechanisms should be used predominantly to finance delegated responsibilities and selected large capital investments with impacts that extend beyond the local level, making them more transparent and public.
6. Although a rather specific issue, the need to improve the public procurement systems in EaP countries should also be mentioned. There is a need to switch from compliance-based procurement to a performance-based (value for money) management of procuring goods, services and works.

So far as country-specific recommendations are concerned, there is clearly a need to improve the level of local funding (the size of sub-national public expenditure compared to total public expenditure) in Armenia, Georgia and Ukraine. This means fundamental financial decentralisation, particularly through transfers from state taxes to community budgets, by enlarging the scope of local taxes, by granting the authority to LSGs to define the rates for local taxes, by simplifying mechanisms of targeted allocations and other grants and by making them more transparent. So far as Georgia is concerned, the risk of using the State Treasury to control local public finance remains high.

5.2 Conditions of office of local elected representatives³⁸

The issue of the conditions of office for local elected representatives is not very frequently discussed, but our findings indicate that it deserves

38. The Congress directly addressed this issue in the case of **Azerbaijan** – “provide all municipalities with administrative buildings as quickly as possible, and finalise the issuing of property documents, especially those in the capital, in the light of Congress Recommendation 132 (2003) on municipal property and the principles of the European Charter of Local Self-Government”.

attention. The following recommendations are proposed as a starting point.

1. Review of the restrictions on those who can stand for local elections: it is suggested that the unnecessary restrictions based on conflict of interest be eliminated and, as a long-term trend, that foreigners with permanent residence permits be allowed to vote and to be elected at local level.
2. Reviewing of the salary conditions of staff on an employment contract (especially mayors): the salary of a mayor should respect the workload and complexity of the work (part-time job positions can be used in small municipalities).
3. Improving the system of reimbursement (allowances) of voluntary councillors for their costs related to the execution of their public duties:
 - a. such a system should be transparent and harmonised within a country;
 - b. the final decision on all personal expenditure should be given to local councils.
4. Improving the mechanism for ensuring the independence of local elected representatives: the Congress asked Georgian authorities in Recommendation 334 adopted in 2013 “to take immediate and effective action to ensure the autonomy and independence of local authorities and democratically elected representatives, so that national election results do not influence local government representative structure”. However, it is relevant for most countries in the region as well.
5. Redesigning the system of social security for elected local representatives, with special focus on the period after leaving office (rights, but also restrictions).

5.3 Relations between state and elected self-governments³⁹

39. The core tasks recommended in this area to **Armenia** by the Congress are as follows:

- to review the legislation in order to better implement the principle of subsidiarity and to allow the local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population;
- to increase the capacity (legally and in practice) of the community councils with regard to all matters related to their competences, in order to increase the efficient administrative capacity of local communities and strengthen their role and importance in relation to the chief executives;
- to ensure that local authorities enjoy full and exclusive powers, as autonomous actors of local public administration, and do not have these powers undermined by the central authorities (or *Marzpetrans* as indicated in our report);
- to clarify the administrative nature of the various tasks and functions that fall within the scope of local government, particularly as regards whether they are mandatory or delegated powers, and strengthen the position of local authorities by leaving the management of important local matters to the discretion of local authorities;
- ensure that the administrative supervision of local authorities is limited to a review of the legality of the local community's action, and that the controlling authority's intervention is kept in proportion to the importance of the interests which it is intended to protect.

The Congress recommendations in this area to **Georgia** deal only with the region's general problems stated above.

The core tasks recommended in this area to the **Republic of Moldova** by the Congress are as follows:

- to reduce the supervision of local authorities to allow them to manage their own affairs, in compliance with Article 8(3) de the European Charter of Local Self-Government;
- to revise the provisions concerning powers and responsibilities to clarify the powers and responsibilities of tier I and tier II local authorities and those of central government with regard to local democracy. This should be done in such a way as to avoid the overlapping of powers and responsibilities not only between these levels but also between central government and local authorities;
- to safeguard local authorities' right to decide on their own staff policy and eliminate discrimination towards local public officials in national legislation with regard to the status and remuneration of national public officials and local government officials.

The core tasks recommended in this area to **Ukraine** by the Congress are as follows:

- to change the current legislation that limits the local authorities' ability to take decisions and manage their own affairs on "matters of local importance";
- to react to the absence of a clear division of powers and administrative activities between central government administration and local and regional authorities, which may give rise to overlapping or duplication in the exercise of powers and cause interference from the central level (in the person of the Head of the Administration) in the activities of local authorities.

The issue of too great a degree of interference of the central but also decentralised state administration in the functioning of LSGs is a reality in all countries of the region and deserves a lot of attention. The first core and general recommendation is as follows.

Reconsider and clarify the division of tasks and powers between parallel structures of public administration, transferring the most important local public competences to democratically and politically accountable municipalities.

Several specific recommendations are also possible.

1. To insert the principle of subsidiarity directly into the constitution and promote it through regular actions and activities at all levels of government.
2. To separate clearly the LSGs' own responsibilities from the delegated ones in law and also in practice.
3. To harmonise sectoral legislation with the LSG law.
4. To establish a structure of real and systemic consultations between the state and local authorities.
5. To provide LSGs with the full right (and sufficient funds) to create their own administrative structures.
6. To provide LSGs with full and real access to legal remedies against inappropriate "state intervention".
7. To reassess the system of supervision of LSGs by the central level. The system of "state control" over LSGs should include only:
 - a. an effective system of legality checks for all local legislative acts;
 - b. comprehensive supervision of the procedures for executing delegated responsibilities;
 - c. an effective system of external auditing for processes and results (also mentioned in point 5.1 on local finance).

Country-specific recommendations:

The country report for the Republic of Moldova directly proposes the use of the “guillotine” method on all legislative acts, establishing the competences of the local public administration in various fields. This means the establishment of new competences only if they are linked to the Administrative Decentralisation Act and the Local Public Administration Act, as well as the elaboration of criteria for the process of administrative decentralisation or competence transfer.

Ukraine should change the current legislation limiting the ability of local authorities to take decisions and manage their own affairs on matters of local importance, and should reconsider the division of competences at regional level.

5.4 Relations between mayors and assemblies

The issue of relations between mayors and councils cannot be solved by a “one size fits all” solution. The concrete solutions should be related to the country’s choice between “mayoral” versus “representative” systems of local democracy (or some sort of compromise on how to allocate powers at the local level). However, independently of the concrete solution, we have to recommend that:

1. the relationship among the different structures of power at the local level should be built on a working system of checks and balances and with a clear description of their rights and responsibilities. Disputes which arise should have clear mechanisms for reaching a (legal) solution and not prevent the proper functioning of local authorities.

Country-specific recommendations:

The right of local council to decide on a vote of no confidence and to dismiss directly elected mayors (Georgia and Ukraine) needs very careful and transparent rules, which allow this institute to be used only for very specific reasons (to avoid any possibility for politically based dismissal). Normally, directly elected mayors should be dismissed only by local referendum.

5.5 Quality of local democracy

The quality of local democracy is an issue for the EaP region – as it is for all countries in transition, where the path-dependence factor limits their chances to establish genuine local democracy, because of the limited performance of all actors (elected representatives, citizens, local state administration and local private for-profit and not-for-profit sector). The following recommendations can be formulated.

1. De-politicisation of local life (as far as appropriate): the common local interest must be more important than any political party membership.
2. Improving the capacities of local elected bodies to deliver local governance by providing capacities and options for systemic training.
3. Making local elected representatives more open, transparent and accountable. This includes for example:
 - a. improved e-communication between LSGs and citizens (web pages serving as information, communication and transaction tools);
 - b. the introduction of long-, medium- and short-term planning by setting concrete objectives related to community interests (this is different from the recently introduced and too detailed and unhelpful formal programme of performance budgeting through hundreds of tables) and the reporting about achievements.
4. Improving the legislation and especially the practices for citizen participation, in particular through:
 - a. the elaboration of a better regulation of citizen participation in LSG;
 - b. the establishment of appropriate consulting bodies;
 - c. the support of co-operation between LSGs, civil society and the private sector on community issues;
 - d. co-creation, co-production and public and private civil sector partnerships.

For countries with a proportional election system, reducing the influence of political parties and the political dependence of local councils on party leadership can be achieved by changing the electoral system to a majority one.

Annex 1: Brief Characteristics of the local government systems in the Eastern Partnership countries

Armenia

There have been significant achievements for the local self-government system of Armenia since its establishment in 1996. The adoption of the constitution in 1995 and the Local Self-Government (LSG) Act in 1996 were the first landmarks in this process, establishing a legislative framework. The first stage of local government formation started with the municipal elections on 10 November 1996. Another important legislative act that identified the general principles of administrative division, number of communities, etc. was the Administrative-Territorial Division Act 1995. This was followed by a new Local Self-Government Act adopted in 2002, constitutional changes made in 2005⁴⁰ and the Local Self-Government of Yerevan Act adopted in 2008.

Very recent changes are connected with amendments to the RA Constitution published and entered into force on 22 December 2015. The main changes are as follows:

Very recent changes are connected with amendments to the RA Constitution published and entered into force on 22 December 2015. The main changes are as follows:

1. Citizens of the Republic of Armenia who have ***attained the age of eighteen*** on the day of election or local referendum shall have the right ***to vote and to be elected in elections of local self-government bodies*** or the right to take part in a local referendum (**Article 48**).
2. Only "***Elections of the National Assembly and Community Councils, as well as referenda shall be held on the basis of universal, equal and direct suffrage by secret vote (Article 7)***". It means that only Community Council shall be elected through

40. Following the official publication of the new draft amendments to the constitution (2015) many amendments will be introduced in the RoA Electoral Code and LSG legislation.

direct elections and the Head of Community shall be elected through **direct or indirect elections**. Community Council and the Head of Community shall be elected for **5-year** term (instead of for 4 year term, **Article 181**).

3. The mandatory requirement to hold local referenda in case of merging or separating the communities **has been removed** from Constitution. Now in view of public interests, communities may be merged or separated by law. When adopting the respective law, the National Assembly shall be obliged **to listen to** the opinion of the communities concerned (**Article 190**).
4. **Article 48 (the right to be elected in elections of LGB)** of the Constitution shall be adopted, only *through a referendum*, amendments to the **Articles 179-190 (Chapter IX –Local Self-Government)** of the Constitution shall be adopted by the National Assembly by at least a **two-thirds majority vote** of the total number of parliamentarians (**Article 202**).
5. Chapter 9-Local Self-Government, except for provision specified in the last sentence of Paragraph 4 of Article 182(*the Community Mayor shall be accountable before the Community Council*), is entered into force on 22 December 2015, the day following the publication of the Amendments of the Constitution in the “Official Bulletin of the Republic of Armenia” (**Article 209**).
6. The Law on Local Self-Government shall be harmonised with the Constitution and shall enter into force on 1 January 2017 (**Article 210**).

The fundamentals of the current administrative-territorial division of Armenia are enshrined in the Republic of Armenia (RoA) Constitution. The administrative-territorial division system of Armenia is regulated by the RoA Administrative-Territorial Division Act, which states that the territory of the Republic of Armenia is to be divided into 10 *Marzes*, while Yerevan, the capital city, is to have the status of a community. The 997 settlements of Armenia are included in a total of 915 communities, which are then divided into 49 urban and 866 rural communities. There are significant differences between the *Marzes* in

terms of population, territory, and the number of constituent communities and settlements; Yerevan is the only community that is not within a *Marz*. Thus, a one-tier system of LSG has actually been formed and operates in Armenia and all communities, with the exception of Yerevan, operate within the same legislative framework. LGUs have the same powers regardless of their population size, administrative territory, financial potential, service delivery capacity, and infrastructure. In the current situation, the LGUs of large communities urgently need new powers and functions, while the smaller ones cannot even exercise many of their existing powers (a large number of communities do not deliver any public services whatsoever, and their budget is sufficient only for staff overheads and for one or two small expenditure items). The large number of sparsely populated communities underlines the severe fragmentation of Armenia's communities, while the absence of a second tier of LSG obstructs adequate implementation of LSG and further decentralisation.

Co-operation between LGUs and *Marzpetarans*, i.e. the territorial administration units (TAUs), is still not fully regulated. One reason is that the legal grounds and functions of TAUs have not been clarified. The *Marzpetarans* are the representatives of the central government in the *Marzes* and are mainly called on to co-ordinate the development and implementation of *Marz* development plans; however, they do not have the required financial and legal leverage to perform these functions adequately. As they are not elected bodies, *Marzpetarans* do not have their own budget, but are an interim unit of governance with the authority to spend budgetary resources in certain areas within the *Marz*.

The powers ascribed to the LGU are divided into three categories: mandatory, voluntary (together referred to as "own" powers), and delegated powers. Legislation provides that the mandatory powers of LGUs prevail over voluntary powers. Although both mandatory and voluntary powers are financed from the community budget, the exercise of voluntary powers depends on budget resources and urgency. The public services that imply shared public interest have been reserved for the central government. The public services that may lead to a regional conflict of interests have been reserved for the decentralised state administration bodies.

It should be noted that Article 10 of the RoA Local Self-Government Act mentions that communities may only implement the power (competences/authorities) prescribed to LSGs by other laws, as voluntary authorities. However, in some cases the community mayor's obligatory or delegated power (competences/authorities) is defined by other laws (for example, the Urban Development Act).

The powers of a community council are defined by Article 16 of the Local Self-Government Act. The community council has to approve: the development programme of the community; the community budget and the statement on the execution of the annual budget; the number, staff list and official rates of the chief of community's staff remuneration and budgetary institutions; the master plan for community urban development, land zoning and use scheme; drafts of detailed planning of individual districts and construction complexes, and drafts of planning and maintenance of historical and cultural sites; the urban development charters of the settlements; and annual inventory lists of community property.

The community council has to oversee the execution/performance of the community budget and the use of loans and other financial resources received by the community, as well as the decisions taken by the chief of the community in respect of their compliance with existing legislation and decisions of the community council. The community council has to define the procedure for implementation of the voluntary powers and required financial resources upon the submission of the chief of the community. This includes the rate of remuneration of the chief of the community; its representative in the council of intercommunity association; the community rules for the operations of agencies and organisations in the sectors of trading, public catering and services, in compliance with the respective legislation; the rates of local duties and fees set by the legislation; and the rates of services delivered by the community.

The community council has to take decisions on the submission of a proposal to the regional governor, and mayor of Yerevan, with regard to: the dismissal of the chief of the community; premature termination of the mandate of a member of the community council; establishment, restructuring and/or dissolution of the budgetary institutions which are subordinated to the community, and of commercial and non-commercial organisations with community

participation, in accordance with legislation; lease or transfer of the property owned by the community; approval of rates or rents, transfer prices and terms as well as the floor price of a property to be transferred through an auction; naming or renaming of streets, avenues, squares, parks of community importance and educational, culture and other enterprises and organisations subordinated to the community; the attraction of loans and other legitimately borrowed resources; granting and recalling by the village and city councils of the title of honorary resident of the community to the citizens of Armenia and those of foreign countries; the coat of arms of the community.

The Local Self-Government Act prescribes the competences of the community mayor (Article 32), and the competences of the community mayor in specific sectors (Articles 33 to 45). The mayor must: convene and preside over the community council sessions in accordance with the procedure defined by the Act and by regulations of the community council; submit the community's four-year development programme to the community council for approval; approve the charters of his/her staff, as well as those of the budgetary and non-commercial agencies and institutions; submit draft decisions on the structures of the staff and budget institutions, as well as amendments thereto, to the community council for approval; submit draft decisions on the number of staff and staff lists and rates of remuneration of the staff and budgetary institutions, and amendments thereto, to the community council for approval; submit draft decisions on creation, restructuring and/or dissolution of budgetary and non-commercial agencies and organisations subordinated to the community, to the community council for approval; submit draft decisions on the composition of councils and supervisory boards of the commercial agencies and organisations subordinated to the community, to the community council for approval; appoint and remove from office the deputy chief of the community, the secretary of the staff and heads of structural subdivisions; in pursuit of the decision of the community council, appoint and dismiss the directors of budgetary institutions.

If the community council twice fails to give its consent, the chief of the community must make an appointment without the consent of the community council; submit for the approval of the community council a draft decision on holding a local referendum; submit for approval by

the community council a proposal on the rules on residents' participation in local self-government in the community; submit a proposal for approval by the community council of the consultation body on volunteer bases; conclude co-operation agreements with other communities in Armenia and other states, submitting them to the community council for ratification; submit draft decisions on the establishment of intercommunity associations, as well as membership of associations established by other communities and the payment of relevant membership fees, to the community council for approval; submit a proposal for approval by the community council of urban development, documents/plans and changes to them in accordance with legislation; conclude contracts on the lease or transfer of community property, in accordance with the procedure defined by the community council; submit draft decisions on the transfer of community property to the community council for approval; submit a proposal, for approval by the community council, related to safe transportation and road construction issues; submit a proposal for approval by the community council, regarding the awarding of the title of honorary resident of the community; submit a proposal for approval by the community council, on the naming and renaming of streets, avenues, squares, parks, and educational, cultural and other enterprises and organisations subordinated to the community (except for historical, cultural and natural history monuments); define the numbering of community buildings and structures; take decisions, issue directives and compile minutes within their (the chief of the community) jurisdiction; independently and at their own responsibility, organise and govern the process of implementation of the responsibilities delegated by the state in accordance with the legislation or procedure defined by the government; in accordance with the legislation or procedure defined by the government, conduct urban development, nature protection, agricultural and other registers of community importance; take measures in accordance with the legislation or procedure defined by the government in respect of the organisation of civil defence, anti-epidemic and quarantine measures, and reduction of the risk of technological and natural disasters, and elimination of any consequences; exercise other powers specified by the constitution and the law.

The general competences of the Yerevan's elected representatives mostly correspond to the general competences of other communities in the Republic of Armenia. However, there are also some essential differences between them, which are prescribed in the new Local Self-Government in the Yerevan Act (adopted on 26 December 2008). For example, compared with the other LGUs in the country, the powers of the heads of the administrative districts of Yerevan are limited (there are four of them in total, while the other LGUs of Armenia have seven mandatory and six delegated powers in this area).

The constitution, amended in November 2005, prescribes provisions for the state on the introduction and performance of legal supervision regarding the lawfulness of LSG activities. Nevertheless, legislation still does not regulate state supervision or the exercise of powers delegated to communities by the state, nor does the legislation regulate measures that may be imposed in the course of administrative supervision by the *Marzpet* (regional governor). The legal and professional supervision functions of the governors are still not clearly delineated, nor are appropriate procedures for their performance defined. The supervisory powers of central government extend not only to a review of the legality of the local community's action, but also to the economic and financial aspects of local government matters, in contradiction to the Charter provisions.

Armenia signed the European Charter of Local Self-Government on 11 May 2001 and ratified it on 25 January 2002; it entered into force in respect to Armenia on 1 May 2002. Since 2002, considerable amendments have been introduced in Armenian legislation, particularly in the Constitution and in Law on Local Self-Government, creating the basis for ratification of Articles 5, 6, 7(2) and 10(3) of the Charter by the National Assembly on 8 December 2015. An essential step in ensuring citizen participation was the ratification of the Additional Protocol to the Charter on the right to participate in the affairs of a local authority, which entered into force in September 2013.

Azerbaijan

The status and competencies of municipalities in Azerbaijan are defined by the constitution and the Status of Municipalities Act. According to the Status of Municipalities Act, local self-governance is a system of organising the local affairs of citizens in Azerbaijan in a way which provides citizens with the chance to realise their discretionary right to address local issues independently and to carry out some of the public affairs identified by the constitution.

Yet, this notion does not allow municipalities to be stipulated in the legislation as institutions with real power or as part of the overall public administration. This ambiguity concerning the status of municipalities is reflected in their limited competences. In reality, all of the functions (utilities, renovation of the territory, certification and registration of citizens living in municipal territories, social service provision, water supply, etc.) that are usually referred to as “own competences” of municipalities are carried out by local state executive committees. At present, the real scope of the competences of municipalities is confined to maintaining the municipal roads, delivering social assistance to people not covered by the state social programmes, maintaining cemeteries and organising funerals.

The first municipal elections in Azerbaijan took place in 1999 and, as a result, 2 735 local self-governance institutions were established. In the following years, this number increased to 2 757. As a result of amalgamation, the number of municipalities fell to 1 717 in 2009 with this number decreasing even further more recently. Following reunification in 2014, the number of municipalities has dropped to 1 607. Currently, there are 73 cities, 147 districts and 1 387 village municipalities.

The reports developed by the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe and the NGO Alliance for Municipality Development (BINA) have identified several major problems regarding the local self-governance institutions in Azerbaijan. These include: the insufficient and ambiguous definition of local self-government in the Status of Municipalities Act; parallelism in the local self-governance system which, according to the constitution, is carried out by both local executive committees, which are state bodies, and municipalities

which only have a very limited role; the subordination, in practice, of municipalities to local executive committees which are part of the state administration; the weak financial potential of municipalities; gaps in the legislation governing the status and responsibilities of municipal servants on the one hand, and their rights and obligations on the other; the problematic procedure of supervision of municipalities (notably the local governments' obligation to report to the parliament about their own operations); and the fact that the capital city of Azerbaijan is not governed by an integrated local government body such as a democratically elected council, but by an executive authority, accountable only to the president, with no Along with the limited and uncertain nature of municipalities' responsibilities, their weak financial state reinforces their problems regarding functionality. In 2014, the total budget income of all municipalities in Azerbaijan was AZM 49.1 (51.7m EUR), which means that the average per capita municipal income in the country amounted to AZM 5.1 (5.4m EUR). The extremely low level of municipal revenues is apparently insufficient even to fulfil the municipalities' very limited tasks and functions – total local government revenues are less than 0.2% of the consolidated state budget. The existing legislation – Tax Code, the Local (Municipal) Taxes and Fees Act, the Financial Basis of Municipalities Act, the Budget System Act – establishes a number of income sources for the municipalities in Azerbaijan. Yet, in practice, the great majority of these income sources do not help to form a foundation for sustainable and high revenues.

Administrative supervision over municipalities' activities is regulated by the Administrative Supervision of Municipalities' Activities Act (adopted 13 May 2003). Article 3 of the Act specifies that administrative supervision is under the control of the Ministry of Justice, and the Centre for Work with Municipalities (under the Ministry of Justice) submits reports to the parliament every February.

According to existing law, municipality members are elected by the people through nationwide voting. Before the start of municipality activities, elected municipality members elect the chairman among them through simple majority.

The main duty of the municipality chairman is to hold municipality meetings, sign off municipality decisions, and issue orders on behalf of the municipality. If the chairman is absent, his authorities are

transferred automatically to the deputy chairman. Hence, the elected municipality members also select the deputy chairman during the internal election process.

According to the Status of Municipalities Act, elected representatives of municipalities are entitled to address local executive committees about local issues, lead elected posts at municipalities, take part in municipality meetings and make necessary decisions, participate in the sessions of the council, periodically meet the population of the community, inform electors about the work of the council, and participate in the meetings of citizens organised by the council. The issue regarding conflict of interest is regulated.

Azerbaijan ratified the European Charter of Local Self-Government in 2001 and, by ratifying it, undertook a number of commitments with regard to local self-governance. In accordance with paragraph II of Article 12 of the European Charter, the Republic of Azerbaijan made a statement regarding undertaking of commitments with respect to certain articles and paragraphs: Article 2; Article 3 (I, II); Article 4 (I, II, IV, V, VI); Article 5; Article 6 (I, II); Article 7 (I, III); Article 8 (I, II, III); Article 9 (I, II, III, IV, VII, VIII); Article 10 (I, II, III) and Article 11.⁴¹

There are three national LSG associations (city, district, and village national associations) which were established in 2006.

Belarus

According to the Basics of Local Self-government and Local Economic Management in BSSR Act which was introduced in 1991, which created a real basis for local government development, whereby local powers were delegated to the local councils. However, since 1994, the process of real local self-government formation and development in Belarus has stopped.

Between 1995 and 1999, the "vertical" model of executive-administrative bodies (executive committees) was established: by "delegating" the councils' powers and authorities to the executive committees, the competence of the latter was increased; the political,

41. The Republic of Azerbaijan About Local Self-Governance and About Ratification of the European Charter Act, dated 25 December 2001 (N 238-IIQ).

economic and staffing leverage of the councils on the executive committees was reduced; changes were made to the constitution and laws, as a result of which the executive committees became subordinated not to the councils but to the president and government. The present pattern differs fundamentally from the principles fixed in the European Charter of Local Self-Government and two types of local bodies have been established:

(a) local government – local executive and administrative authorities directly subordinated and accountable to the President of the Republic of Belarus;

b) local self-government - local councils of deputies elected by citizens every four years.

The core legal basis for local self-government is found in the Constitution of the Republic of Belarus which prescribes the principles of local representative bodies and the procedure of their formation. The constitution also defines: the forms of implementation of local governance and self-governance; the procedure of settlement of conflicts between local government authorities of various territorial levels and between authorities and citizens; priorities of interests within the activities of local authorities and self-governing authorities; the principles of subordination of local authorities and the government; the exclusive competence of local deputy councils; concepts regarding the local budget, communal property, and local taxes and duties; the basis for termination of a local representative body's activity; and the vertical hierarchical structure for both executive authorities and councils (the constitution introduces such concepts as superior executive and administrative authorities and superior representative bodies).

The Local Governance and Self-Governance in the Republic of Belarus Act which came into force on 4 January 2010, establishes the concepts and norms of local governance and self-governance, the status and the competence of local deputy councils, local executive committees and administration and their officers, as well as guarantees concerning their activity. The Act establishes the basis and forms of relations between government and local authorities and inter-level relations between local authorities. The Act establishes the forms of direct citizen participation in local self-governance implementation,

including via the bodies of territorial public self-governance, defining their status, formation procedure and operations.

Other relevant rules are the Electoral Code of the Republic of Belarus, the Budgetary Code of the Republic of Belarus, the Tax Code of the Republic of Belarus, the Administrative and Territorial Structure of the Republic of Belarus Act, and the Status of a Deputy of a Local Council of Deputies of the Republic of Belarus Act.

The concepts, which are normally used in practice by many states, such as "municipality", "community" and "local community" are entirely missing from the law. In global practice, it is the community that has the right to organise local communities, delegating some parts of its rights to the elected council. In the Republic of Belarus there is no community as an entity being the subject of local self-governance.

The local self-governance authority system consists of the following levels:

- a) regional level – 7 units (6 regional councils, Minsk Municipal Council), regional self-governance authorities are superior to self-governance bodies at basic and primary levels;
- b) basic level – 128 units (118 district councils, 10 municipal councils subordinated to the regional level), self-governance bodies at basic level are superior to self-governance bodies at primary level. The Minsk Municipal Council, apart from its rights as a self-governance body at regional level, also has the rights of a self-governance body at basic level;
- c) primary level – 1 193 units (1 160 rural councils, 19 settlement councils, 14 municipal councils subordinated to the district councils).

At regional level, the smallest region is Grodno with 1 053 thousand inhabitants and the largest region is Gomel with 1 424 thousand inhabitants. At district level, the smallest district is Rassony (Vitebsk region) with 10 000 inhabitants and the largest district is Borisov (Minsk region) with 188 000 inhabitants. At primary level, the smallest unit is Oniskovichy rural council (Brest region) with 475 inhabitants (2009) and the largest unit is Olshany rural council (Brest region) with 7 900 inhabitants (2009).

The Local Governance and Self-Governance Act assigns general and exclusive competences to all types of councils. The exclusive competences of councils are connected to: approval of local budgets and reports of their implementation; approval of programmes of social-economic development for the territories under their authority; the definition of the procedure of governance and management of communal property; the definition (with the permission of the regional council) of local taxes and duties (dog ownership tax, resort fees and duties collected from those harvesting mushrooms, berries etc.); and the calling of local referenda (however, these powers are a mere formality in practice, as the key role in dealing with these issues belongs to local executive councils).

Councils also have some powers to settle marginal administrative and territorial issues (changes in the names or boundaries of rural councils, villages or settlements, as well as the names of streets, squares etc.). Councils have the right to establish mass media, define the rates of duties for renting hunting and fishing areas, and bodies of water, as well as to influence international co-operation.

The Act distinguishes the singularities of the competences of local councils of various territorial levels and it lists in total 50 responsibilities of councils (22 of those are aimed at the internal organisation of work). In comparison, the total number of powers and authorities of executive committees is 130 and all of those are related to the day-to-day support of citizens' daily needs and activities. The quality and conditions of the lives of citizens are directly dependent upon the executive committees' work. In this regard, executive committees are not accountable to citizens.

The Act establishes the following forms of a deputy's activity in the council and its bodies and agencies: participation in the working sessions of the council and in the meetings of its bodies; delivering inquiries and statements; participation in the inspection of state bodies and other organisations and the development of proposals to eliminate contraventions and violations; participation in the work of deputies' groups and associations and other matters provided by legislation. The Act establishes the following forms of a deputy's activity within an electoral constituency: consideration of submissions by citizens and legal persons; personal reception of citizens and of legal persons' representatives; the holding of meetings with citizens;

participation in activities concerning public discussion in the sphere of architecture and town planning; reports to the electorate and other matters provided by legislation. The deputy: personally meets citizens at least once per month; considers received submissions of citizens and legal persons; can involve relevant officials from the local executive committee and other organisations (in co-ordination with them) regarding the electoral constituency, in personally meeting citizens and considering their submissions; exercises control over the implementation of decisions taken on submissions of citizens and legal persons; studies and analyses the reasons for those submissions and sends proposals, including proposals for dismissing those reasons, to the council and its bodies, to the local executive committee and other organisations.

The mayor is in charge of and manages the operation of the council, ensures interaction with the executive committee, represents the council in relations with other state bodies, organisations and citizens; calls sessions of the council and manages preparations for those sessions, invites representatives of other councils, executive committees, bodies and organisations, as well as citizens, to the sessions and conducts the sessions; sends the council draft resolutions for consideration, assigns tasks to their chairpersons, signs decisions and session minutes, issues decrees, arranges supervision over the implementation of council decisions; is involved with the consideration of deputies' requests, and with the consideration of citizens' and legal persons' submissions, and with the implementation of administrative procedures; personally receives citizens and legal persons' representatives; presents reports on his activities to the council sessions at least once a year, as well as informs citizens about the current situation of the council and about other issues within the scope of his reference. In addition, a chairperson of a regional and basic level' council provides, for the council's consideration, suggestions on the cancellation of an executive committee Chairperson's decrees, executive committees' and lower councils' decisions, and decrees of the lower council's chairperson, which do not conform to the legislation; directs the presidium of the Council, arranges and conducts its meetings, signs decisions and minutes; presents reports to the presidium on the council's activities at least once a year. The

chairperson of a primary level council performs functions related to the scope of the competence of the presidium of the council.

Councils can delegate some of their authorities to councils of other levels, executive committees, their chairmen and territorial public self-governance bodies (with their consent and where there are sufficient financial resources available). However, in practice, this regulatory norm is not applied.

There are problems in the division of competences among various levels of local authorities, there is no real economic basis for the local councils' activities and their independence in the budgeting and taxation sphere is rather limited.

The principles of control and supervision of local government provide that the superior representative and executive bodies of both local (councils and executive committees) and central government (national assembly and the government) have the right to cancel, and the president has the right to cancel and (in regard to councils) suspend, decisions of corresponding subordinated local government authorities. The projects and approved regulatory acts of local government authorities are subject to legal scrutiny; however this procedure is to be fulfilled by departments of the local government itself or superior bodies.

The Republic of Belarus is the only European country which is not a member of the Council of Europe and did not accede to the European Charter of Local Self-Government. As can be seen from the text above, at present a number of Belarusian norms and laws do not meet modern European concepts of local self-government.

The right of the councils to create unions in the form of associations is stated in the Act, but there are no such associations created at present (as of 20 May 2015).

Georgia

The Transition Period Act, adopted on 14 November 1990, was the first of several laws designed to replace the Soviet system, among which were the following:

- several amendments to the Constitution of the Republic of Georgia, passed throughout 1990–1991;
- the Elections to the Local Bodies of State Power Act (adopted on 24 January 1991);
- the Local Administration during the Transition Period Act (adopted on 29 January 1991);
- the Prefectures Act (adopted on 23 April 1991).

Local administration from 1990 to 1991 generally functioned on two levels. The first level was constituted by villages, settlements and towns. The representative body was the local council (*sakrebulo*), elected for a three-year term. The head of local administration (*gamgebeli*) was nominated by the prefect and confirmed by the local council. The second level consisted of districts and cities with special status. At this level, local councils were elected for a three-year term. In addition, a prefect was appointed by the chairperson of the supreme council (later the president of the republic) to head the district executive branch and act as the representative of the central government for a four-year term. As the highest regional state official, prefects had supervisory powers over local authorities, including village and town councils, and were entitled to annul local council decisions without appeal.

In October 1997, the Georgian Parliament adopted the Local Governance and Self-Governance Act; according to the Act, local self-governance was executed in villages, communities, boroughs, cities and also in the cities which were not included as a part of the region, and local governance was executed by the executive and representative bodies of the regions. As a result, over 1 000 local administrative units were created in Georgia.

In December 2005, the new organic Local Self-Governance Act was adopted by the parliament, entering into force following the official announcement of the election results in 2006; this was the first law which abolished governance at local level and established the self-governance system in Georgia. In this arrangement, the government clearly stated that the local government unit is the self-governing city or union of the settlements and municipalities, and therefore the

number of municipalities went from over 1 000 to 69; 5 cities were granted the status of self-governing cities.

On 5 February 2014, the Parliament of Georgia approved, on the third and final hearing, the new Local Self-Government Code, which brought about certain changes in the current local self-government system. This is the third attempt by the Georgian authorities, from the date of gaining independence, to reform the system and bring “real decentralisation” to the local population.

According to the LSG Code, Article 3: local government is exercised in municipalities – self-governing cities and self-governing communities. The next part of the Article provides a definition of the self-governing city, defining it as an urban category settlement which, according to the law, which has the status for being self-governing, as granted by the government.

However, there are no more specifications in the Code to make exceptions, such as the number of inhabitants or potential for growth, as included in the draft code. As a result of the reform, 12 self-governing cities were granted this status instead of 5. There is no clear definition of the criteria concerning which city can be granted this status, therefore it should be noted that in the list we can find small cities like Ambrolauri which only have approximately 2 500 inhabitants.

Article 4 defines the primary territorial unit of population settlement and states that there are three categories of settlements: village, borough and town. According to the Code, the rules for creation of a settlement, its abolition, granting and changing the relevant category, as well as for changing the administrative boundaries of the settlement, are determined by the Georgian Government. However, up until now, this regulation has not been adopted. It is important to realise that the Code gives the right to the local council to discuss and approve the creation/abolition of administrative units of the municipality, or changing the borders of administrative units of a self-governing city.

Local self-governance has two branches in Georgia – executive and representative. Unlike in previous Acts regulating local self-governance, in the current Act it is strictly defined that the executive body and the highest official of the municipality is *gamgebeli*/lord

mayor. *Gamgebeli* is to be found in a self-governing community and a mayor is to be found in the self-governing city. A collegiate administrative body – the municipal council (*sakrebulo*) – is the municipal representative body. Mayors are elected directly by voters. As a result, during the July 2014 local self-government elections the population of Georgia elected 2 083 members of 71 municipality councils, 12 lord mayors, 59 *gamgebelis*. The interest of both political parties and independent candidates was high in the local self-government elections. According to the estimates, a total of 10 700 candidates were running for office in the 2014 local self-government elections.

The types of municipal powers are own powers and delegated powers. The municipality's own power is the power, established under this Code, which is exercised by it independently and under its own responsibility. The power delegated to the municipality is the power transferred to it, with the appropriate material and financial resources, by the state authorities on a law or contract basis, according to the procedure established by law. Own powers are connected with: local infrastructure development; local budget drafting and implementing; constructing local roads and water supply systems; preschool education management; establishment of regulations for keeping pets and management of the issues related to stray animals; the arrangement and maintenance of cemeteries; provision of shelters for and registration of homeless persons; creation of a safe environment for human health; development of adequate infrastructure for persons with disabilities, children and elderly people at local facilities, including the provision of appropriate adaptation and equipment at public meeting places; and municipal transport. The last two powers, namely concerning the construction of sheltered places and the development of adequate infrastructure, are the problematic issues, as their fulfilment requires quite a significant amount of money, while the income of local government has not increased and is mostly dependent on transfers from central government.

According to the LSG Code, the competences of the mayors are divided into five groups: organisational field; communication with the local council; financial/budgetary field; management of municipal property; and other matters.

The first section unites the mayoral competences connected with the co-ordination and management of the city hall, for example the appointment of city hall civil servants, their promotion and disciplinary liability, adoption of job descriptions and internal regulation documents, preparation of the bill on resolutions for the staff list and the status of the city hall and presentation of it to the council for approval.

The second sector of mayoral competences includes the following issues: at least once a year the mayor must report to the council and, if one quarter of the council members insist, mayors should report at other times too (it should be admitted that this is an obligation and not a competence); preparation of bills of administrative acts to present to the council for adoption; the right to propose that the head of the council should call an extraordinary session of the council; the right to add issues to the agenda of the session; the right to attend the open and/or closed sessions of the council; and ensuring the execution of the legal acts adopted by the council.

The third sector of mayoral competences refers to financial budgetary issues. Mayors have the right to: prepare and present the bill for the budget to the council and to ensure the execution of the adopted budget; present the annual report on the execution of the budget to the council (this is also an obligation not a power/competence); according to the rules of the budget code and the internal regulations of the council, distribute funds between the various budget classification paragraphs and codes of spending institutions, without making amendments to the budget of the municipality; propose to the council, the adoption of an annual plan of procurement, bills on the acts of establishment, amendment or abolition of local taxes and fees and, in the name of the municipality and with the consent of the council, to organise the use of credit facilities.

In the field of municipal property, the fourth sector of mayoral competences, mayors can make a decision to manage property in accordance with the legislation and the consent of council. With the consent of the council, they can make the decision to establish private for-profit and non-profit entities, to be a part of them or to reorganise/dissolve them. Mayors need the consent of the council on every activity connected to the management of municipal property; they should ensure the maintenance and reconstruction of property

and should monitor the results of relevant auctions to ensure that the responsible person is performing their duties properly.

Other powers, the fifth sector of mayoral competences, are connected with the signature on contracts in the name of the municipality, representation of the municipality before third parties, the right to create consultation councils and bodies, and the granting of honorary titles and awards.

The rights and powers of the council are defined in five main fields: administrative territorial organisation and defining of its identity; organisational activities; control and regulation of executive branch activities; financial/budgeting fields; and the managing and disposal of municipal property.

According to the law, the municipal budget is the system of revenues to be received for the purpose of fulfilling the municipality's functions and responsibilities, charges to be covered, and changes to the balance, approved by the relevant representative body of the municipality. The municipal budget is independent from the budgets of other municipalities, as well as from the budget of the autonomous republic and the State budget of Georgia. The draft budget is submitted by the mayor to the council; if the council has any comments, it returns the draft to the mayor who can then share the comments or present the same version of the draft budget. It is important to state that during the budget approval process in the municipality *sakrebulo*, amendments to the draft budget may be made only following their agreement with the *gamgebeli* (mayor). When common agreement does not occur, special procedures are put into practice to ensure that solutions are provided.

There are four types of transfers, namely equalisation (lump sum) transfer, capital transfer, target transfer, and special transfer. The system of allocation of the equalisation transfer is opaque. One of the most important issues that has changed with the new LSG Code is the declaration that income tax will now be distributed among central and local level budgets, because the only local tax that goes directly into the local budget at present is property tax. The Georgian Government was obliged to present the mechanism of the distribution of income tax before 1 January 2015. On 12 December 2014 amendments were made to the budgetary code of Georgia and the income tax that will be

distributed to local budgets, but only from 1 January 2016, was declared.

The most relevant issue today, regarding local government, are the amendments relating to participatory mechanisms for local citizens in the decision-making process, which are being widely discussed with different members of civil society. The Ministry of Regional Development and Infrastructure has prepared the draft, which aims to create local councils in settlements with no more than 2 000 inhabitants, which will be the consultation body of the *gamgebeli* and *sakrebulo*. According to Article 165, paragraph 1 (d) the deadline for the government was 1 January 2015, to prepare and present the bill to the parliament. In July, 2015 the amendment was adopted by the Parliament of Georgia.

According to Article 7 paragraph 3 of the Code, before making decisions concerning the competences of local government, the government is obliged to have prior consultations with those NGOs that unite more than half of the municipalities in the country. Such a body is the National Association of Local Authorities of Georgia (NALAG), the non-governmental, non-profit and non-political organisation which combines all entities of local self-governance. NALAG aims at further developing the local self-governance system; developing democracy at the local level; decentralising government power throughout the country; and developing local self-governance institutions.

Georgia has not yet signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No.207).

State supervision regulations on local municipalities are defined in the Chapter XVI of the LSG Code; the aim of the supervision is to ensure the legal and proper performance of the activities carried out by the municipalities. There are two types of supervision: legal and field supervision. Legal supervision is conducted on the normative acts of the council, in order to ensure their relevance with national legislation; the aim of field supervision is to ensure the proper performance of the delegated competences. It should be underlined that, even in the case where the normative act of a council is illegal or violates the rights of the third parties, the state supervision body has no right to overturn

the council's action, but has to appeal to the courts. In the process of field supervision, which is performed by the relevant ministry, the state has the right to: request a document or information; suspend or cancel the action of the individual legal act adopted by the municipality body/authority; replace the municipality. In May 2015, the law was amended and the government now also has the right to deliver recommendatory instructions.

Republic of Moldova

During the independence period, the local public administration system in the Republic of Moldova underwent several stages of formation and evolution. In 1991, according to Law No. 635, local self-government was founded, which signified a move from the Soviet system of party-based organisation to a rudimentary structure of local authorities.

In 1994, following the adoption of the constitution, a series of laws on administrative-territorial organisations, local government and elections were approved, aiming to implement democratic principles enshrined in the constitution. The number of districts was reduced (from 40 to 36) and local structures at district, town and village level were institutionally strengthened.

The local government reform in 1998 brought structural, functional and institutional changes. Out of 36 districts (local structures of the second level), 10 counties were formed and the number of communes/villages (local structures of the first level) was reduced from 900 to 664. The institution of prefect (the representative of the government at local level empowered to supervise the legality of local authorities' acts, following the French model) was founded and the process of decentralising local public and financial services was initiated.

In 2003, these reforms were abolished. The new legislation, adopted by the communist government, revoked the barely initiated reform. The 2001 Administrative-Territorial Organisation Act reorganised further those 10 counties into 32 districts and those 664 structures of the first level were reorganised into 917 units, of which 28% have a population of under 1 500 inhabitants. Thus, it returned to the system of local administration set up in 1994.

In 2006, a new package of laws was adopted, and is currently in force, reflecting the principles of local autonomy and decentralisation and with certain mechanisms to ensure local development. Implementation of these principles takes place through the Administrative Decentralisation Act and the Local Public Administration Act of 2006. In addition, for improving the local governance process, the Regional Development in the Republic of Moldova Act was adopted, under which six development regions were established, aiming to achieve regional development policies. The National Strategy of Decentralisation was approved by Parliament on 5 April 2012 and followed by several changes, particularly in the area concerning financial decentralisation, through the strengthening of the LPA revenues, reform of the system of transfers and shared taxes, and strengthening of the autonomy and financial management at local level (in force from 2015).

According to the constitution and legislation in force, the local government system is organised into two levels. The first level includes villages (communes) and cities (municipalities). The second level includes rayons, the municipalities of Chişinău and Balti, and autonomous territorial units with special status (ATU Gagauzia). The local government is based on the following constitutional principles: local autonomy, decentralisation of public services, eligibility of local government and citizen consultation on local problems of special interest.

The authorities of the local public administrations (villages and towns) are elected local councils and mayors and, at the district (rayon) level, elected district councils and their heads (presidents/mayors). Relations among them and between central and local authorities are based on the principles of autonomy, legality, transparency and co-operation in solving common problems.

The local/district councils are representative and deliberative authorities of the first and second levels organised in villages (communes), cities (municipalities) and districts. The councils consist of councillors elected by universal equal, direct and secret suffrage for a term of four years. Moldovan citizens who have reached the age of 18 and are entitled to vote may apply to become councillors. The latest local elections took place on 14 June 2015. In these elections, 11 680

local councillors – 1 110 of whom represent second-level (rayon) units and 10 570 of whom represent first-level units – were elected.

The mayor of villages (communes) and cities (municipalities) is also the head of local government and is a representative authority of the local community, being elected by direct vote by the village population. Any citizen of the Republic of Moldova eligible to vote and who has attained the age of 25 is able to apply for the position of mayor. During the last local elections in June 2015, 898 mayors of towns, villages and communes were elected.

At district level, the president of the district is an executive public authority of the district council. He/she is elected by the district council, on the proposal of at least one-third of councillors and elected by a majority vote of councillors. Dismissal of the president of the district is done through the decision of the district council by a vote by two-thirds of the elected councillors, and at the proposal of at least one-third of them. Following the June 2015 local elections, 32 presidents of districts were elected.

Both the Local Public Administration Act and the Status of Chişinău Municipality Act, regulate the organisation and functioning of public administration in the municipality of Chişinău – the capital city of the Republic of Moldova. The municipality of Chişinău is organised into sectors, cities and villages and is administered by the municipal council, city and village councils (communal) as deliberative authorities, and by the Mayor of Chişinău, the mayors of villages (communes) and cities as executive authorities. The municipal council of Chişinău co-ordinates the activity of the municipality councils of administrative-territorial units (ATUs) for the provision of municipal public services and performs duties established by law for second-level ATUs. The mayor of the Municipality of Chişinău exercises the duties provided by law for the mayors of first-level ATUs and special duties prescribed by the Status of Municipality of Chişinău Act. In suburban towns, there are local council – deliberative authorities and mayors – executive authorities.

The administration of the ATU of Gagauzia is special. In addition to local authorities of the first and second levels throughout the country, in the ATU of Gagauzia there is a supreme territorial organs level, in

which the order of formation and duties are established by a special law, the Special Legal Status of Gagauzia (Gagauz-Yeri) Act.

As representative and deliberative organs of the local community, the local councils have the right to initiate and decide upon, under the law, all matters of local interest, except those pertaining to other public authorities. The main competences of local councils are: management of the ATU's patrimony; establishment of local public institutions and organisation of public services; approval of the organisational chart and staff of the mayoralty (of the district president's unit); approval of the local budget and the manner in which to use the reserve fund; approval of master plans regarding localities and urban landscaping; and approval of specific rules and tariffs for subordinated public institutions and public services of local interest.

As the executive authority, the mayor is responsible for carrying out the decisions of the local council, central government acts, as well as national and international laws. To exercise legal competences, the mayor is assisted by the mayoralty. The most important duties of the mayor are: to represent the local community in relations with other public authorities, natural or legal persons in the country and abroad; to ensure the local budget drafting of the ATU; to be responsible for the public patrimony inventory and the management of the local community; to conduct, co-ordinate and control the activity of local public services; and to issue permits and licences required by law, etc.

The activity of the first and second levels of LSGs is subject to administrative control, according to the constitution and the legislation in force. Administrative control includes the supervision of the legality and opportunity (suitability) of the local public administration authorities' activity. However, in the main administrative control involves the legality of the local public authorities' activity. The performance of opportunity control is permitted only in relation to the duties assigned by the state to the local authorities. The State Chancellery performs legal control through its territorial offices. Opportunity control is performed by the government, the specialised central public administration authorities (for example the State Ecological Inspectorate or State Labour Inspectorate), and other administrative authorities working, for example, through the disbanded services of the administrative and territorial units according to the competence provided by law.

The following local authority documents are subject to mandatory legality control: the decisions of the first and second level local councils; the legislative acts of the mayor, of the district's president and of the praetor; the papers referring to the organisation of bids and assignment of land plots; the papers referring to the hire and dismissal of local public administration personnel; the documents that involve financial obligations of at least 30 000 Moldovan lei (MDL) (2 000 EUR) in the first level administrative and territorial unit and of at least MDL 300 000 (20 000 EUR), in the second level unit; and the documents issued while performing a duty assigned by the state. A copy of these documents is to be submitted to the government's territorial offices no later than five days following signature of the document. The secretary of the council is responsible for this obligation.

For delegated competences, any LSG must submit approved decisions within five days from the adoption date. The state institutions have the right to modify or withdraw the submitted document within 15 days from the date of receipt, for specified reasons. In the case where the decision of the opportunity control subject is considered to be illegal, the local authority has the right to pass it to the administrative court within 30 days from the notification date, notifying the control institution that issued the decision. The LSG may request the administrative court to urgently suspend the decision of the control authority, or the undertaking of other temporary actions, if the risk of unavoidable damage exists. During the opportunity verification, the local authorities and their employees are obliged to grant access to their and the divisions' office buildings, to answer questions, give explanations and provide documents on the request of the administrative verification subjects' representatives.

The Republic of Moldova signed the European Charter of Local Self-Government on 2 May 1996, and ratified it on 2 October 1997, without any reservations. The Charter came into force on 1 February 1998. 1 February is the Day of Local Autonomy in the Republic of Moldova. Moldova has also signed and ratified the European Convention on Cross-border Co-operation between Territorial Communities or Authorities in force from 1 February 2000. All the Articles of the Charter are clearly transposed, more or less, in the constitution and domestic law. Moreover, the Charter serves as a reference text for the Republic of Moldova's domestic law on local and regional democracy.

Article 7 of the Local Public Administration Act determines that when exercising their powers, local authorities enjoy the autonomy provided for and guaranteed by the Constitution of the Republic of Moldova, the European Charter of Local Self-Government and other treaties to which the Republic of Moldova is a party.

Until 2010, there were numerous associations in the Republic of Moldova representing local authorities and new ones were being created. The great majority of them were created on a territorial basis, e.g. the Association of Mayors from Orhei District, or on a political criteria basis, such as the Association of Liberal Mayors. These structures, however, did not represent a single point of view of the local authorities. During this period, efforts were made to create representative national associations of local authorities. Some have succeeded, for example, the National League of Associations of Mayors and the Association of Presidents and Regional Councillors, but these associations also have not been seen as credible partners for dialogue and for promoting the interests of local authorities. In March 2010, the Congress of Local Authorities from the Republic of Moldova (CALM) was created. CALM is a voluntary association, a union of legal entities of public law, with the status of legal person, non-governmental and non-politically affiliated, a non-profit organisation of public utility, which consists of the TAUs registered according to the law as cities (municipalities) and villages (communes). Currently CALM consists of around 600 members (two-thirds of Moldovan municipalities) and affiliated rayons. CALM represents the largest and single non-politically affiliated association of LGs in the Republic of Moldova, comprising representatives of different political orientations, nationalities and genders. CALM is recognised both by the national government and by the international community as one of the key representative voices of local authorities. CALM's supreme governing body is the general assembly. During general assembly sessions, CALM is headed by an administrative board, president of the congress and executive director. CALM consists of several specialised departments which assist members in solving various problems.

Ukraine

The evolution of Ukraine's local government system (following independence in 1990) can be divided into four periods.

First, the period of transition from the inherited centralised Soviet system of state power to the system of local self-government (1990-1993): the first Local Authorities and Local Self-Government Act (1990) defined local councils as state authorities (government agencies); the first local self-government bodies were established by the Local Self-Government Act in 1992.

Second, the period of relative decentralisation (1994-1995): according to the new Formation of Local Authorities and Self-Government Act (1994) local and regional self-government authorities were established, mayors and heads of regional councils were to be elected directly, local councils of each level were to appoint their own administrative (executive) bodies.

Third, the period of centralisation (1995-2014): the Constitutional Agreement of 1995 ensured the formation of the state local administrations instead of administrative (executive) bodies of regional and district councils. This local government system was duplicated by the constitution in 1996.

Fourth, the first steps towards decentralisation (2014-2015): the concept of the reform of local self-government and territorial organisation of power was approved by the government on 1 April 2014; since then a number of regulations aimed at the formation of capable communities have been adopted. This reform may significantly change current LG structures in the country, as described below (for example large-scale amalgamation has already started and new local taxes have been introduced).

It should be noted that, during the years of its independence, Ukraine has not established the necessary reforms to create an efficient, transparent, accessible and accountable system of local authorities. The territorial structure, inherited from the Soviet Union, has not been changed, so the existing structure of local and regional power is too complicated and the responsibilities of local authorities are not strictly defined. Real reforms started only in 2014 and the first stage of these is still ongoing. In March 2015, the President of Ukraine created the Constitutional Commission, which has already started its work on drafting constitutional reform in three areas, within which the decentralisation of power and reform of local-self-government have been prioritised.

The legal base for local and regional governments contains, in particular, the Constitution of Ukraine, the European Charter of Local Self-Government (incorporated into Ukrainian domestic law on 15 July 1997), the Local Self-Government Act, the Local State Administration Act, the City of Kyiv Act, the Budget Code of Ukraine and the Tax Code of Ukraine.

Local and regional government structure is based on the three-level territorial division of Ukraine. The first level, according to the constitution, includes villages, settlements and cities (some of them include district divisions). Nevertheless, in practice there are also urban villages and village councils, established as units of territorial division,⁴² which are not established by the constitution but which have existed since Soviet times. Along with this, in some cases within the territories of cities, other separate administrative units, such as villages or settlements, are located. Each of these units elects its own local authorities, thus on the level of jurisdiction of the 61 local councils there are 197 other councils of the same (first) level of territorial division. Citizens of villages, settlements and cities are considered as belonging to territorial communities, which have the right to elect local authorities. There are slightly fewer than 30 000 such communities with different population sizes and resources, which complicates the local self-governmental structure and budgetary relations. In early 2015, the total number of territorial units of the first level included 27 208 villages, 1 180 settlements, 885 urban villages, 182 cities of regional importance, 276 cities of district importance, and 25 cities with district divisions.

The second level of territorial division consists of districts (rayons). There are 490 districts in Ukraine with an average population of 52 000 people in village districts and 130 000 in city districts.

The third level of territorial division according to the constitution includes 24 regions (oblasts), the cities of Kyiv, Sevastopol and Crimea.

42. According to the data of the State Statistics Service there are 10 279 such units in Ukraine as of 1 January 2015.

The local self-government structure at the first level of territorial division contains a mayor, a local council and its executive bodies (administration). The mayor is elected directly for a 5-year term; at the same time, the mayor is the highest official of the territorial community, the head of the local council and the head of the system of executive bodies (administration). Thereby, the mayor combines the representative, decision-making and executive power at the local level. The mayor works on a regular basis and cannot be a deputy of any council, or carry out other paid or entrepreneurial activity. The salary is determined by government decree, while the local council may sanction an increase. In the council, the mayor has the power and status of a deputy of the council. The main powers of mayor are the following: representing the territorial community, council and its executive committee with other entities; leadership of the council, convening its sessions, organisation of its work, signing its acts; offering the structure of the executive bodies, their personal and quantitative composition for approval by the local council; appointing and dismissing heads of departments and other executive bodies; acting as the administrator of budget funds; concluding on behalf of the local community, the council and its executive committee contracts, submitting them for approval by the council; issuing orders etc. The mayor signs contracts, which should be approved by the local council if they concern matters within its exclusive competence. It is the mayor's prerogative to propose the structure and the number of members of the executive bodies (administration), which should be approved by the council. Formally, the mayor is accountable to the territorial community and responsible before the relevant local council, which can make a decision of no confidence in the mayor. However, in the case of political support for the majority in the council, this control never becomes a reality.

The local council is a representative and decision-making body of the territorial community. It is elected directly for a 5-year term by the majority (one-half of councillors) and proportional (one-half of councillors) system, apart from village and settlement councils which are elected by the majority system. The local council, besides the power to organise its work (approving rules of procedure, establishing and abolishing permanent and other commissions of the council etc.), is also responsible especially for the formation of the executive

committee of the council, the approval of its quantitative and personal composition, modifications to the structuring of the executive committee and its dissolution; examining reports by the mayor concerning the activities of executive bodies; making decisions of no confidence in the mayor; the abolition of acts of the executive bodies of the council; approval of programmes of socio-economic and cultural development, and approval of local budgets; taking decisions on local borrowing, transfer of communal property; approval of contracts concluded by the mayor on behalf of the council, on matters within its exclusive competence etc. The local council is entitled to abolish acts of the executive council where they are contradictory to the constitution or the laws of Ukraine, other legislative acts, or the decisions of the council.

Each local council has the ability to define its administrative structure in order to adapt it to local needs and ensure effective management (as demanded by Article 6 of the Charter). The Local Self-Government Act only requires all local councils to establish executive committees. In addition, the council can form other administrative bodies on the proposal of the mayor, depending on the needs of the territorial unit. The competences of councils and mayors are distributed as follows. The mayor proposes the structure of executive bodies, appoints heads of departments and other executive bodies, who are ex officio the members of the executive committee, heads the executive committee and the whole system of executive bodies and signs the acts of the committee. The council approves the structure and the number of members in the executive bodies in their jurisdiction, controls the management of the administration, and cancels acts of the executive committee on the grounds of non-compliance with the Constitution or laws of Ukraine, other legislative acts, or the decisions of the council.

The second and third levels of the government structure are identical: there are district or regional councils, and district or regional state administrations. It must be emphasised that regional and district councils are the only local self-government bodies at the appropriate level of territorial division; they do not have executive bodies.

District and regional councils are responsible for the approval of the appropriate administrative units' socio-economic and cultural development programmes, approval of budgets, distribution of transfers from the state budget in the form of grants, and subsidies

between district and local budgets of territorial communities at the first level of territorial division. Management of local affairs is done by the regional and district state administrations, which belong to the executive power of the state (heads of administrations are appointed and dismissed by the President of Ukraine based on proposals made by the government). According to the Local Self-Government Act, district and regional councils delegate powers to the appropriate state administration bodies. Thereby, there is a duplication of local self-government and governmental authorities' powers. Moreover, there is no effective mechanism for district and regional councils to control the local state administrations' activities (this control consists of only two forms, namely examining reports made by the local state administration heads and making decisions of no confidence in the head of the local state administration, which is rarely applied in practice).

The features of the local government system in Kyiv (the city with specific status) are defined in the 15 January Kyiv – the Capital of Ukraine Act. The city of Sevastopol also has specific status, according to the Constitution of Ukraine, but the relevant legislation has not yet been adopted.

The features of the local government structure in the occupied territories are defined by the Law of 16 September 2014 on the special order of the local self-governments in parts of Donetsk and Lugansk (No. 1680-VII).

In early 2015, the total number of local councils was 12,032, including 24 regional councils, 488 district councils, 458 city councils, 783 settlement councils, and 10 279 village councils. 9 478 village territorial communities have a population of less than 3 000, 4 809 village territorial communities have a population of less than 1 000. Over the past decade, the number of village councils has increased by 1 052 units, while rural population has decreased by more than 1.6m people. The number of settlements has decreased to 456 villages.

The material and financial basis for local self-government, according to the constitution, is movable and immovable property, revenues of local budgets, other funds, land, natural resources that are the communal property of villages, towns, cities, territorial communities and objects of their common property, which are managed by district

and regional councils. However, in fact only the local authorities of cities of regional significance have relatively good capacities to perform their tasks and functions, since they are based on a more or less adequate finance, infrastructure and personnel resource basis. 5 419 local budgets are subsidised for 70% and 483 local budgets of communities are subsidised for 90%.

The Constitution of Ukraine (Article 19) stipulates that local authorities and their officials can only act on the basis of the Constitution and the law, within the powers and in the manner determined by it. Accordingly, the law provides that only local authorities have the competences defined in the Local Self-Government Act and other laws. This makes the implementation of the principle of subsidiarity and the effective activity of local authorities in the interests of their communities, impossible.

According to the Local Self-Government Act, local councils of the first level have exclusive competences covering decision-making in different areas of local affairs, for example: socio-economic and cultural development; budget, finance and prices; communal property management; powers in the field of housing and communal services, consumer and trade services, catering, transport and communications; in the construction industry; in education, health, culture, physical culture and sports etc. They do not have any delegated responsibilities. Meanwhile the executive bodies have their own and delegated competences, the number defined by the Local Self-Government Act in the sphere of own competences is 93, and in the sphere of delegated competences is 86.

Regional and district councils have only own competences, they delegate the power of managing to the local state administrations.

There are several modes of control and supervision at local government level. Administrative control within the system of local self-government consists of the following: village, settlement and city councils control the activities of mayors and executive bodies of local self-government, and they can cancel acts of the executive committees; the mayor can stop acts of the executive committee and bring the matter to the relevant council; the territorial community has the right to terminate the powers of local councils and mayors through a local referendum. Administrative supervision and control of state

administrations over local self-government consists of the following: executive bodies of village, settlement and city councils are under the control of local state administrations within the sphere of delegated power; however, acts of local self-government can be cancelled only by the courts. Administrative supervision and control of regional and district councils over local state administrations consists of the following: heads of local state administrations report to appropriate councils about the realisation of delegated power; regional and district councils can make a decision of no confidence in the head of the local state administration which has to be considered by the President of Ukraine, and if such a decision is passed by a majority of two-thirds of the council then the President has a duty to dismiss the head of administration. Judicial control over local authorities consists of the following: all acts and decisions of local authorities can be reviewed by the courts.

Ukraine ratified the Charter in 1997, accepting all of the Articles of the Charter (all provisions included, with entry into force on 1 January 1998). According to the Ukrainian Constitution, after its ratification the Charter became an integral part of national legislation with direct force.

Ukraine has not ratified the Convention on the Participation of Foreigners in Public Life at Local Level. As far as Congress monitoring recommendations and the Committee of Ministers recommendations are concerned, these are mostly included in the concept of the reform of local self-government and territorial organisation of power, approved by the government, and in the drafts of constitutional reform of local self-government.

There are three national LG associations: the Association of Ukrainian cities (in existence since 1992 and nowadays having a membership of 557 cities, towns and villages), the Ukrainian Association of village and settlement councils (in existence since 2009 and having more than 8 600 members), and the Ukrainian Association of district and regional councils (in existence since 1991 and having 418 members). In 2010, these three associations signed an agreement on co-operation and mutual assistance, and founded the National Congress of local self-government.

Annex 2: Congress recommendations on local democracy in Armenia (n° 351), and on local and regional democracy in Azerbaijan (n° 326), Georgia (n° 334), Republic of Moldova (n° 322) and Ukraine (n° 348)

26th SESSION

Strasbourg, 25-27 March 2014

Local democracy in Armenia

Recommendation 351 (2014)⁴³

The Congress notes with satisfaction that:

- a. Armenia has made significant efforts to implement the provisions of the Charter, starting with important constitutional changes in 2005 and following up with the adoption of the new law on Local Self-Government of Yerevan in 2008;
- b. progress has been made in clarifying the legal status of municipal servants and in organising vocational training for them;
- c. Armenia ratified the Additional Protocol to the Charter on the right to participate in the affairs of a local authority (CETS No. 207) on 13 May 2013 with entry into force on 1 September 2013 and that new legislation was adopted immediately after with the aim of strengthening citizens' participation in local government;
- d. the Council of Europe project "Support to the consolidation of local democracy in Armenia", in which the Congress of Local and Regional Authorities is also involved, was launched February 2014 with the support of the Danish Government.

43 .Explanatory report (CPL(26)2FINAL): <http://bit.ly/1tw3iOX>

The Congress draws attention, however, to the following points of concern:

- a. local authorities take part in service delivery only to a limited extent and they do not regulate and manage "a substantial share of public affairs under their own responsibility" (Article 3.1 of the Charter);
- b. the existence of numerous small and weak municipalities continues to be a structural problem, creating imbalance between local authorities and limiting the service delivery capacity of municipalities;
- c. the weak capacity of community councils in the exercise of their initiatives with regard to all matters relating to their competences (Article 4.2 of the Charter);
- d. local authorities play a very limited role and in practice do not have always full and exclusive powers, with local government bodies serving more as agents for the central government, than as autonomous actors of local public administration (Article 4.4 of the Charter);
- e. the own tasks and delegated powers of local authorities while defined in law are not applied in practice (Article 4.5 of the Charter);
- f. the absence of a formal mechanism of consultation between central government and local authorities on decision making process relating to all matters which concern them directly (Article 4.6 of the Charter);
- g. the supervisory powers of central government extend not only to a review of the legality of the local community's action, but also to the economic and financial aspects of local government matters, in contradiction to the Charter provisions (Article 8.2 of the Charter);
- h. local communities have limited own resources (Article 9.1 of the Charter);
- i. local authorities cannot impose real local taxes or determine the rate within reasonable limits set by law (Article 9.3 of the Charter);
- j. the financial equalisation mechanisms are not appropriate as regards the fiscal capacities and financial needs of communities (Article 9.5 of the Charter) and the other state transfers on allocation of grants are not regulated by any law (Article 9.7 of the Charter).

In the light of this, the Congress recommends that the Armenian authorities:

a. review the legislation in order to better implement the principle of subsidiarity and to allow the local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population;

b. improve and strengthen territorial governance in order to make it more effective through, for instance, inter-municipal co-operation or mergers of small communities and to mitigate the over-centralisation of public administration;

c. increase the capacity (legally and in practice) of the community councils with regard to all matters related to their competences, in order to increase the efficient administrative capacity of local communities and strengthen their role and importance in relation to the chief executives;

d. ensure that local authorities enjoy full and exclusive powers, as autonomous actors of local public administration, and do not have these powers undermined by the central authorities;

e. clarify the administrative nature of the various tasks and functions that fall within the scope of local government, particularly as regards whether they are mandatory or delegated powers, and strengthen the position of local authorities by leaving the management of important local matters to the discretion of local authorities;

f. set up a formal consultation mechanism in domestic law, to ensure that local authorities and national associations of local authorities are duly consulted on matters which concern them directly "in due time and in an appropriate way", and that central government decisions are accessible to local elected representatives and their associations, which should be considered in practice as privileged and active partners;

g. ensure that the administrative supervision of local authorities is limited to a review of the legality of the local community's action, and that the controlling authority's intervention is kept in proportion to the importance of the interests which it is intended to protect;

h increase the “own” financial resources of local authorities as required above (see 7. *a* and *c*);

i. improve the efficiency of the tax mechanism in municipalities, by allowing them the right to determine the rate within reasonable limits set by law in order to strengthen their autonomy;

j. review the financial equalisation mechanism to implement it in a more appropriate way, and develop measures for the allocation of equalisation grants on the basis of fiscal capacities and financial needs of communities, in order to correct the effects of the unequal distribution of potential sources of finance, in accordance with Article 9.5 of the Charter;

k. review the relevance of the declarations made by Armenia on Articles 5, 6, 7 para. 2, and 10 para 3 of the Charter at the time of deposit of this instrument in the light of the recent developments which occurred in Armenia in this respect;

l. take into account the present recommendation in the implementation of the Council of Europe project “Support to the consolidation of local democracy in Armenia”.

23rd SESSION

Strasbourg, 16-18 October 2012

Local and regional democracy in Azerbaijan

Recommendation 326 (2012)⁴⁴

The Congress notes with satisfaction:

a. the creation in 2006 of three national associations of municipalities (villages, towns and cities) to represent municipal interests at national level;

b. the signature of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106);

44. Explanatory report (CG(23)12FINAL): <http://bit.ly/262Hubh>

c. the signature on 10 February 2010 of the decree by the President of Azerbaijan authorising the application of the law of the Azerbaijan Republic on "State registry and provision of municipalities with proper certificates", which provides that the State Land and Mapping Committee has to work out and submit maps of municipal lands to the body in charge of the State registry of municipalities by 1 January 2013.

The Congress deeply regrets that most of the recommendations addressed in 2003 to the national authorities have not been implemented; nor has a timeline been set to take them on board in the foreseeable future, making the following issues still highly relevant:

a. the insufficient and ambiguous definition of local-self-government in the law on the status of municipalities (Articles 2 and 3 of the European Charter of Local Self-Government);

b. the parallelism in the local self-governance system, which according to the constitution is carried out by both local executive committees, which are State bodies, and municipalities which only have a very limited role (Articles 3 and 4 of the charter);

c. the subordination, in practice, of municipalities to local executive committees which are part of the State administration (Articles 3 and 4 of the charter);

d. the imprecise division of competences and responsibilities between municipalities and local executive committees (Article 4 of the charter);

e. the weak financial potential of municipalities due to low-level State transfers provided to them and the ineffectiveness of the tax collection mechanisms available to municipalities (Article 9 of the charter);

f. the lack of a procedure for consultation with municipalities and their national associations, in due time and in an appropriate way, in planning and decision making for all matters which concern them directly (Article 4.6 of the charter);

g. the gaps in the legislation governing the status and responsibilities of municipal servants on the one hand, and their rights and obligations on the other (Article 6 of the charter);

- h. municipalities' lack of property and the slowness of property transfers from the State to municipalities, in particular as regards land;
- i. the lack of clarity of the law on the status of municipalities, regarding the procedure of supervision of municipalities, and notably the local governments' obligation provided by Article 146-IV of the constitution, to report to the parliament about their own operations (Article 8 of the charter);
- j. the lack of consultation on the part of central authorities with representatives of the three national associations of municipalities in the decision-making process in the field of local self-government; these associations do not have any active role in practice to represent municipal interests at national level (Article 4.6 of the charter);
- k. the fact that the capital city of Azerbaijan is not governed by an integrated local government body such as a democratically elected council, but by an executive authority, accountable only to the president, with no democratic control;
- l. the legislative gap concerning the status of Baku, the capital city, although it is foreseen by the law of the Azerbaijan Republic on "territorial structure and administrative territorial division", namely by Article 5.9 thereof, which states that a law on Baku city must be adopted.

The Congress recommends that the Committee of Ministers invite the Azerbaijan authorities to:

- a. review the law of the Republic of Azerbaijan on the status of municipalities with the aim of recognising municipalities as decentralised institutions exercising part of the overall functions of the State;
- b. reconsider substantially and clarify the division of tasks and powers between parallel structures of local public administration, transferring the most important local public competences to democratically and politically accountable municipalities;
- c. put an end to the subordination, in practice, of municipalities to local State committees, in order to allow municipalities to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population;

- d.* allocate sustainable financial resources to municipalities, commensurate with their competences, and ensure that municipalities can freely dispose of their resources within the scope of their powers;
- e.* distribute State transfers and special grants in a transparent and predictable manner, taking the interests of local governments into consideration;
- f.* improve the efficiency of the tax collection mechanism in municipalities and actively co-operate with municipalities, in order to better ensure adequately qualified personnel to implement these procedures;
- g.* create appropriate procedures of consultation with municipalities and the national associations which represent them, which take into account criteria of timeliness and appropriateness as provided by the European Charter of Local Self-Government, in the planning and decision-making processes for all matters which concern them directly;
- h.* ensure a high level of transparency in local government mergers by determining the strategic objectives and goals of any further municipal integration and discussing them with the municipalities concerned as well as with their associations, prior to any change of local government administrative borders;
- i.* raise the effectiveness of measures to launch capacity-building and proper training programmes for members of municipal staff, in order to improve the quality of their daily administrative work;
- j.* provide all municipalities with administrative buildings as quickly as possible, and finalise the issuing of property documents, especially those in the capital, in the light of Congress Recommendation 132 (2003) on municipal property and the principles of the European Charter of Local Self-Government;
- k.* clarify the legislation and determine the exact role of the administrative authorities which are empowered to exercise legal supervision over municipalities, thereby eliminating the uncertainty in the current legislation which contradicts the European Charter of Local Government;

- l. abolish the obligation on local governments to report to parliament about their own operations and limit the supervisory authority of central government to the control of lawfulness of municipal acts;
- m. involve or strengthen the involvement of representatives of the three national associations of local authorities (villages, towns and cities) in the decision-making processes related to local government in order to give them the possibility to represent the interests of municipalities at national level;
- n. consider providing a system of democratic election for the local government of Baku city;
- o. establish a law for Baku city as required by Article 5.9 of the law of the Azerbaijan Republic on "territorial structure and administrative territorial division" in the light of Congress Recommendation 219 (2007) on the status of capital cities and Recommendation 133 (2003) on management of capital cities.

24th SESSION

Strasbourg, 19-21 March 2013

Local and regional democracy in Georgia

Recommendation 334 (2013)⁴⁵

The Congress notes with satisfaction that:

- a. substantial progress has been made in the field of local and regional democracy since the Congress visits to Georgia in 2003 and 2004 and that the principles of the Charter are to a high extent integrated in constitutional provisions;
- b. the authorities have demonstrated a visible political will to take Congress recommendations into account, to integrate the guiding principles of local self-government into domestic legislation and, in general, to co-operate with the Council of Europe;

45. Explanatory report (CG(24)10FINAL): <http://bit.ly/1twl1Ws>

- c. the regional development efforts have been considerable and have borne fruit, with Adjara as a dynamic and positive example;
- d. the direct election of the Tbilisi mayor is considered to have been a success and might serve as an example to launch the debate on the issue of direct election of all mayors in the country;
- e. the new government, formed after the parliamentary elections of 2012, have expressed their willingness to further develop and decentralise local government, indicating that the principles that drive their reform strategy are subsidiarity, financial autonomy and citizen participation in local government;
- f. the initial intention to abolish the Ministry for Regional Development and distribute its component functions between the Prime Minister's office and the Ministry of Economy has been reconsidered and no longer prevails.

The Congress expresses concern that:

- a. the principle of subsidiarity is still not enshrined in the Georgian Constitution and there are cases where some "field" laws enter into contradiction with the Organic Law. Substantial progress is still to be made through institutional and legislative changes, as regards decentralisation, local autonomy and accountability;
- b. although consultation with local authorities and their representatives worked well and NALAG had good standing in negotiations with the national authorities under the previous government, some communication issues appeared after the October 2012 parliamentary elections between NALAG and the Government. If this situation persists, it could have a negative effect on the good relations between local elected representatives and the government;
- c. financial autonomy of local authorities continues to be a problem and their limited "own resources" make them dependent on government grants, carrying with it, particularly during a financial crisis, the risk of a cut down on grants, which could limit their discretion in the use of their finances;
- d. the equalisation formula may not be serving the interests of the weaker municipalities in that the ratio of allocations they receive are

not sufficiently high to enable an acceptable level of delivery of public services;

e. administrative control of municipalities is an issue in so far as existing legislation does not provide for standards to apply to the auditing of local self-government entities, although international standards of auditing have been adopted and that there is a lack of qualified experts specialising in local self-government audit and a lack of “value for money” audits;

f. the recent incidents reported to the delegation during the fact finding visit, involving pressure exerted on local elected representatives to resign their posts or change their party affiliation in favour of the new ruling party, have put local democracy in danger. They indicate a flawed perception (both on the part of the public and of the politicians) of local government as being directly dependent on national politics, bringing with it an expectation that changes in the central government should immediately be reflected in local government, regardless of the mandates obtained through democratic local elections;

In the light of this, the Congress requests the Committee of Ministers to invite the Georgian authorities to take account of the following recommendations:

a. amend the Constitution so that the principle of subsidiarity is specifically recognised in the field of local government, by being mentioned as one of its guiding principles and streamline of the legislation, giving the Organic Law a prominent role regarding all issues touching upon local government;

b. to recognise the representative position of NALAG as an interlocutor and partner and involve them in the discussions and negotiations regarding local and regional autonomy, including the newly announced reform project, ensuring at the same time the engagement of a wide range of stakeholders representing local government, as well as their territorial, thematic and professional associations;

c. to enhance the financial capacity of local governments, including the capacity to generate their own resources, using all available means including enlarging the tax base;

d. to improve the financial equalisation procedure (both as regards distribution and increasing the equalisation fund);

e. to revise the existing legislation with an aim to provide standards for the auditing of local self-government entities, and provide training to experts in local self-government audit, with emphasis on “value for money” audits;

f. to take immediate and effective action to ensure the autonomy and independence of local authorities and democratically elected representatives, so that national election results do not influence local government representative structure. The Congress urges the Georgian authorities to ensure that the provisions of the Charter and namely, that of the Preamble and of Articles 3, 6 and 7.1, as referred in the Report of the fact-finding mission to Georgia (CG/BUR(23)47), are fully observed and respected. The Congress calls on all political forces in the country to co-operate for the promotion of the independence and democratic functioning of local government;

g. to continue the regional development efforts, ensuring a certain degree of continuity with regard to the regional development strategy and policies in existence, in order to consolidate what has been achieved;

h. to consider the issue of direct elections for all mayors, in the light of the experience provided by Tbilisi;

i. to consider signing and ratifying Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and ratifying, in the near future, the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS 159).

22nd SESSION

Strasbourg, 20 March 2012

Local and regional democracy in the Republic of Moldova

Recommendation 322 (2012)⁴⁶

The Congress notes with satisfaction:

a. the progress made in the Republic of Moldova since the Recommendation 179 (2005), in particular the measures launched by Parliament in the form of an action plan in response to all of the Council of Europe recommendations. This plan has given rise to several legislative and institutional initiatives in the field of local public administration;

b. that the decentralisation of power and local self-government are one of the strategic priorities of the 2011-2014 Work Programme of the Government of the Republic of Moldova;

c. that on 26 January 2012 the Government approved the National Decentralisation Strategy, which should be on the Parliament's agenda for the first half of 2012;

d. the Council of Europe joint project with the Republic of Moldova for the introduction of confidence-building measures on both banks of the river Nistru/Dniestr in 2011, including the proposed follow-up measures to be taken in 2012, and the outlook for 2013;

e. the progress made in regional development policy, particularly through various crossborder projects in which the Republic of Moldova is currently taking part;

f. the inclusion on the Parliament's agenda (for the first half of 2012) of the enactment of a new law on the status of the capital city;

g. the threefold increase in the number of women acceding to local public office over the past 8 years and the existence of several projects aimed at consolidating women's position in society, in particular the "Gender Strategy".

46. Explanatory report (CG(22)10FINAL): <http://bit.ly/262IV9P>

Taking note that a certain number of points taken up in Congress Recommendation 179 (2005) on local and regional democracy in the Republic of Moldova still remain relevant, the Congress notes with regret:

a. that one of the consequences of the current political crisis in the Republic of Moldova has been to put a break on the measures for the development of local public administration set out in the Moldovan Government's Work Programme for 2011-2014;

b. that the Ministry of Local Authorities has been abolished;

c. the major imbalance between local authorities' powers and responsibilities and the resources allocated to them;

d. local authorities' very limited financial and fiscal autonomy, which is reflected in the excessive oversight exercised by the national authorities over tier II and by tier II over tier I, in particular with regard to the management of financial resources;

e. the insufficiency of local taxes and the lack of clarity in the way in which central government redistributes financial resources to local authorities;

f. the lack of clarity in the distribution of powers and responsibilities between the two tiers of local authorities and between local and central government;

g. the lack of regulations for expediency checks, sometimes carried out at its own discretion, by central government on the way in which local authorities exercise the powers delegated to them by the state;

h. local authorities' limited freedom in recruiting and fixing the conditions for the remuneration of local government officials, and the existence of discrimination between public officials working for central government and those working for local government officials with regard to their conditions of pay;

i. the absence of relevant legislation enabling the local authorities or their representatives to take legal action before all their domestic courts in the event of a violation or the risk of a violation of one of their rights;

j. the functioning of the capital, which is governed by an inappropriate law that does not correspond to the special situation of Chişinău, which has a dual status, given that it is both a tier I territorial unit (*oraş*) and a tier II unit (*municipiu*);

k. the difficulties that local elected representatives in the region to the right and left of the Nistru/Dniestr have in fulfilling their duties, owing to the pressure exerted on them by the security forces in the Transnistrian region of the Republic of Moldova;

l. the difficulties facing citizens living in localities close to and in the security zone of the Transnistrian region of the Republic of Moldova with regard to freedom of movement and the management of their everyday affairs;

m. the insufficient dialogue between central government and the authorities of Gagauzia with regard to all aspects of local self-government concerning them.

The Congress recommends that the Committee of Ministers invite the Moldovan authorities to:

a. continue discussions on the National Decentralisation Strategy within Parliament with a view to its adoption and ensure that it is implemented in keeping with the national authorities' stated intentions;

b. reconsider establishing a Ministry of Local Authorities with responsibility for decentralisation and the reform of public administration;

c. allocate to local authorities financial resources which are commensurate with their powers and responsibilities, as stated in Article 9(2) of the European Charter of Local Self-Government, so that they are in a position to exercise them in the light, in particular, of Congress Recommendation 313 (2011) on local elections in the Republic of Moldova (5 June 2011);

d. reduce the supervision of local authorities to allow them to manage their own affairs, in compliance with Article 8(3) de the European Charter of Local Self-Government;

e. permit local authorities to collect more fees and local taxes, in addition to property tax and taxes on built assets, the rates of which could be determined by local authorities within the limits set by the law, in keeping with Article 9(3) of the European Charter of Local Self-Government. It also appears necessary to clarify the procedures for the share of financial resources allocated to local authorities so that they are in a position to draw up their own budget and meet their citizens' needs;

f. review the legislation currently in force in respect of local public administration to bring it into line with the principles set out in the European Charter of Local Self-Government. In particular revise the provisions concerning powers and responsibilities to clarify the powers and responsibilities of tier I and tier II local authorities and those of central government with regard to local democracy. This should be done in such a way as to avoid the overlapping of powers and responsibilities not only between these levels but also between central government and local authorities;

g. review the legislation governing expediency checks to ensure that they are clearly regulated and restricted, in particular by laying down criteria defining the exact cases in which such checks may be carried out;

h. safeguard local authorities' right to decide on their own staff policy and eliminate discrimination towards local public officials in national legislation with regard to the status and remuneration of national public officials and local government officials;

i. revise the relevant legislation in order to clarify it regarding, on the one hand, the ability of local authorities and/or their representatives to take legal action before the courts in the event of a violation, or the risk of a violation, of one of their rights; and, on the other, the subjects of appeal, so as to enable those authorities or their representatives to lodge a direct appeal before all their domestic courts against any legislative or governmental act which affects or could potentially affect their rights;

j. continue the efforts made by the authorities to improve the consultation of local authorities on all matters directly concerning them on the basis of a detailed procedure in keeping with Article 4(6) of the European Charter of Local Self-Government;

k. enact and implement a new law on the status of the capital city, Chişinău, in accordance with Recommendation 219 (2007) of the Congress;

l. take the necessary steps to render the area close to the Transnistrian region of the Republic of Moldova more secure and put a stop to the intimidation to which some local elected representatives are subjected;

m. take measures to ensure the free movement of people and goods and implement economic development programmes with commensurate financial resources for local authorities in the immediate neighbourhood of the Transnistrian region of the Republic of Moldova; enhance co-operation and confidence-building measures between the population and the local and regional authorities in the regions to the left and right of the Nistru/Dniestr situated in the security zone;

n. introduce a mechanism for improving dialogue between central government and the authorities of the Autonomous Territorial Unit of Gagauzia on all aspects of local democracy;

o. sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority dated 16 November 2009;

p. calls upon Moldova's authorities to promptly ratify the European Charter for Regional or Minority Languages (ETS No. 148).

25th SESSION

Strasbourg, 29-31 October 2013

Local and regional democracy in Ukraine

Recommendation 348 (2013)⁴⁷

The Congress welcomes:

- a. the initiatives taken by the government in view of a substantial territorial reform and the fact that local authorities have been represented in this process by their associations through the consultation mechanism as well as the adoption of the "Strategy for Regional Development until 2015" by the government ;
- b. the adoption of the "Law on Associations of Local Authorities" of 16 April 2009 which defines the legal basis for the organisation and activities of local government associations and their voluntary union as well as their interaction with central and local authorities;
- c. the joint action of the national Ukrainian associations within their "Congress of Local and Regional Authorities of Ukraine";
- d. the declarations made by the President of Ukraine on 28 March and 6 June 2013, in which he states that local government reform is one of the most urgent reforms that the country should carry out ;
- e. the creation of co-ordination and consultation instruments such as the "Constitutional Assembly", which brings together representatives of political parties and civil society to develop proposals for the changes to be made to the Constitution of Ukraine, and the "Council of Regions" which aims to improve relations between the state governments and local authorities;
- f. the work of the Constitutional Assembly on the "Amending Motion on Chapter XI - Local Autonomy – of the Constitution of Ukraine" presented to the Assembly at its meeting of 21 June 2013;
- g. the ratification by Ukraine of Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings.

47. Explanatory report (CG25)8FINAL): <http://bit.ly/1sGuVEj>

The Congress regrets however:

a. the legislation that limits the local authorities' ability to take decisions and manage their own affairs to "matters of local importance" and the fact that local authorities cannot fully exercise their competences on all matters that concern them, which poses a problem with regard to Articles 3 and 4 of the Charter;

b. that several towns and cities, including the capital, have remained without an elected mayor for long periods owing to a gap in the electoral law, which undermines the exercise of local self-government in these towns and cities, in particular in the light of Article 7 para. 1 of the Charter;

c. the limits put on local governments' financial autonomy by the restrictions on the system of inter-budgetary relations, as well as the insufficient concomitant financing of delegated competences, that transparency is not always guaranteed, notably in the distribution of subsidies and transfers and the complexity of the equalisation formula which complicates its application to the regions;

d. the absence of a clear division of powers and administrative activities between central government administration and local and regional authorities, which may give rise to overlapping or duplication in the exercise of powers and cause interference from the central level (in the person of the Head of the Administration) in the activities of local authorities and to non-compliance with the provisions of Article 8 of the Charter;

e. the rural exodus which has been the cause of a demographic decline and difficulties in maintaining local economic vitality in many municipalities, and a recentralisation of the competences of small towns by the allocation of these powers, initially granted to local authorities, to the State;

f. the slow pace of the reform despite the strong statements made at the highest level of the State, and the new draft laws recentralising competences at the central level in spite of the aims of the reform.

In the light of the above, the Congress recommends that the Committee of Ministers invite the Ukrainian authorities to take into consideration the following recommendations:

a. reinforce subsidiarity by granting local authorities competence for a substantial share of public affairs and increase the capacity of local authorities to act, by promoting voluntary amalgamations between local authorities in the manner to be specified by the central authorities, such as, for example, mergers and inter-municipal co-operation;

b. organise, in the shortest possible time, elections for mayors in the cities where this post has been vacant for a long time, and in particular in the capital city of Kyiv;

c. reinforce the financial autonomy of local authorities and improve the equalisation system, providing a fair and transparent redistribution of funds, based on clear criteria and objectives, by including it in the reform agenda to ensure conformity with Article 9 of the Charter ;

d. transfer the competences of the administrations in districts and regions to elected representatives in order to establish an administration under their responsibility;

e. develop specific strategies, notably by transferring competences to the local level, aimed at revitalising the periurban and rural areas exposed to demographic, economic and social decline, and involve local authorities in these geographical areas in the development of these strategies by the central government authorities;

f. implement the reform in a timely manner by adopting legislation based on the "Amending Motion on Chapter XI of the Constitution of Ukraine", presented at the meeting of the Constitutional Assembly on 21 June 2013 and, if necessary, by a revision of the Constitution;

g. ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), already signed by Ukraine on 20 October 2011, particularly in order to strengthen public access to locally important planning documents.

Annex 3: Recommendation 383 (2015) on the “Conditions of office of local and regional elected representatives”

29th SESSION

Strasbourg, 20-22 October 2015

22 October 2015

Conditions of office of elected representatives

Recommendation 383(2015)⁴⁸

1. Democratic systems require elected political representatives to govern on behalf of their constituents. Governments have a duty to provide and/or facilitate conditions of office for elected representatives at all levels of government which encourage people from all sectors of the population to stand for political office, so that representatives reflect the composition, profile and diversity of the populations that they serve.
2. The available data suggests the trend in those elected to political office at the local and regional level is towards less rather than more diversity, and that political office is becoming more and more exercised by the elderly and by those who have the most money and time to spare.
3. For the majority of elected representatives, the responsibilities of elected office constitute a part-time occupation for a limited period of time, subject to periodic renewal of their mandate. Whilst not a career or profession in its own right, elected office needs to be carried out professionally and with appropriate standards firmly in place.
4. Article 7 of the European Charter of Local Self-Government affirms that citizens should not be prevented from seeking local or regional political office due to financial and material considerations or the conditions under which they would serve.

48. Explanatory report (CG/2015(29)15FINAL): <http://bit.ly/1UznnK1>

5. Unless there is a culture where people who are working full-time are allowed to take time away from work for their elected representative duties and be financially compensated, where there is an adequate carers allowance in place for attending meetings, it will continue to be difficult for certain groups, such as young working parents or people with full-time caring responsibilities, to take an active role in local and regional political life.

6. Given the significant differences in the range of duties attributed to elected representatives, the size and budget responsibilities of local and regional authorities, and the distinctive nature of national political, constitutional and administrative frameworks, it is not possible to prescribe a standard set of conditions for office holders that would fit every local or regional authority.

7. Nevertheless, the Congress believes that national, regional and local authorities have a fundamental responsibility to provide adequate support and resources to local and regional elected representatives, to enable them to fulfil to the best of their abilities the duties entrusted to them by their constituents.

8. In return for providing reward and support, for those who serve, citizens have a right to expect commitment and integrity by those who are elected. Selflessness, objectivity, accountability, honesty and transparency should be characteristic of, and visible in the day-to-day workings of all public bodies, including local and regional government.

9. Those in public office should uphold high standards of integrity and make decisions free from personal interest or other inappropriate considerations. Strong governance frameworks and clear ethical standards serve to both reduce the risk of corruption and enhance the public's confidence in the probity of local and regional politicians.

10. The Congress believes that for a local or regional authority to be truly representative of a locality it is important to have as broad a demographic profile of the elected representatives as possible and reflect the diversity of population that they represent. Member States, and in particular, political parties, should seek to promote local political service as a valuable civic contribution. Through educational programmes and the media they should seek to encourage participation (including standing for election) from all citizens, especially in terms of gender, age and cultural background.

11. The Congress therefore, invites the Committee of Ministers to ask member states, as far as is practical, and recognising that there are differences in the range of duties and responsibilities of representatives at the local and regional level, to ensure that:

a. all systems of local and regional government have arrangements in place to prevent individuals being disadvantaged or discouraged from seeking local or regional elected office by reason of their personal circumstances, the disruption to their family or career or financial and material penalties;

b. individuals with disabilities are not excluded from seeking local and regional elected office due to inability to access and participate in meetings and that, where appropriate, they be provided with additional support to assist them in undertaking their duties;

c. local and regional authorities provide adequate financial reward for the work performed by local and regional elected representatives, which realistically reflects the workload demands of the role, according to the duties and size of the local authority. Major positions of responsibility should carry additional payments, reflecting the extra work involved;

d. levels of payment be established within a national or regional framework in order to avoid disparities between authorities. Where decisions about allowances are made locally, they should be determined by a panel independent of the local or regional authority, take account of relevant benchmarks and be the final decision with no political interference;

e. there is a separate system of expenses to cover costs that are wholly and necessarily incurred in conducting elected duties, which should not be taxable. These should also be determined within a national framework where their legislation falls within national competence;

f. elected representatives who are in paid full-time employment are entitled to adequate leave of absence from their employment to attend to official elected duties and do not suffer loss of salary or other rights;

- g. when elected representatives have a full-time elected role and notably when they have no other employment, the approach towards entitlements in terms of health insurance, severance and pensions be consistent with those enjoyed by elected national representatives, so that their position is not adversely affected by their public service;
- h. all payments, both allowances and expenses, made to elected representatives, be based on a published scheme and individual payments be made public in a timely manner;
- i. local and regional representatives, on their election, receive a role specification, detailing their responsibilities and obligations, and be obliged to follow a formal induction training programme, which should be a nationally-based training module, adaptable to the particular circumstances of the local or regional authority;
- j. continuous professional training be made available to local and regional elected representatives, in particular concerning legislative changes and matters that affect the management of local and regional authorities;
- k. codes of conduct exist at the local and regional level, based on published national codes of ethical standards, and that these be applied uniformly within countries. Mechanisms should exist to monitor the implementation and judge possible breaches of the code;
- l. all elected representatives at the local and regional level complete a public register of interests at the start of their period of service, including the interests of close family members to be updated annually and whenever there are significant changes to personal circumstances. Declarations should also be made and recorded of possible conflicts of interest in relation to a particular council decision;
- m. elected members who act honestly and in good faith do not face personal civil liability for the proper execution of their duties are indemnified against such claims, unless they can be shown to have acted negligently or recklessly.

Annex 4: Resolution 368 (2014) on the “Strategy on the right of local authorities to be consulted by other levels of government”

26th SESSION

Strasbourg, 25-27 March 2014

Strategy on the right of local authorities to be consulted by other levels of government

Resolution 368 (2014)⁴⁹

1. The Congress, in accordance with Congress Resolution 347 (2012) on the right of local authorities to be consulted by other levels of government;
2. Bearing in mind that, according to Statutory Resolution CM/Res(2011)2 of the Committee of Ministers, the Congress is a consultative organ of the Council of Europe, and the Committee of Ministers and the Parliamentary Assembly shall consult the Congress on issues which are likely to affect the responsibilities and essential interests of the local and/or regional authorities that the Congress represents:
 - a. adopts the Strategy on the right of local authorities to be consulted by other levels of government, as appended to this resolution;
 - b. calls on national associations of local and regional authorities to work with it to ensure the best possible implementation of the strategy.

49. Explanatory report (CG(26)29FINAL): <http://bit.ly/1VZqPmo>

APPENDIX

Strategy on the right of local authorities to be consulted by other levels of government

Purpose

The Congress of Local and Regional Authorities of the Council of Europe has asked the Governance Committee to present a strategy to strengthen the consultation processes between the different levels of government in the member States in order to make these more effective and thereby to improve the quality of legislation and local and regional policies.

Key activities

It is proposed that the strategy consist of the following activities, the most important being the first one, namely to develop guidelines on the application of the relevant articles of the European Charter of Local Self-Government (ECLSG).

1. Provide guidelines for national associations and/or delegations of the Congress to use as a tool and inspiration in their dialogue with their regional and national governments about improving consultation processes.
2. Make use of the findings of the Congress's monitoring and, as appropriate, its co-operation activities, to extend the application of the relevant articles of the ECLSG to all member States.
3. Systematise the evaluation of national consultation processes in the light of the above-mentioned guidelines in the Congress country monitoring exercises.
4. Collect data from member states, for example by using a questionnaire, at the end of 2015 to evaluate whether their national consultation processes are in line with the Congress guidelines and, if not, what action has been taken in response to the strategy.
5. Prepare a report in 2016 in the light of the data collected (with the possibility of following on with a second strategy for 2017-2018).

Elements to be included in consultation guidelines

Purpose of consultations between the political levels

1. It is in the interest of national and regional authorities, on the one hand, and local authorities on the other, to create forms of continuous consultations between ministries and the political representatives of the different political levels. This dialogue can:

a. create a readiness to meet future challenges and deal with emerging crises;

b. create conditions for a shared perception of the problems and opportunities related to local government and municipal operations;

c. provide a forum for general discussion on the financing of the tasks that the state imposes on local government;

d. increase government understanding of the reality in which local authorities have to deliver their share of the public services;

e. increase understanding within the municipal sector of the overall responsibility of parliaments and governments and their ambitions for the whole public sector;

f. contribute to the development of legislation and policies that will be more effective in that national and, where applicable, regional authorities regularly receive comprehensive advice on the manner in which local authorities consider and are able to handle various forms of government regulation;

g. reduce the negative effects of sectorisation by involving all ministries responsible for large municipal areas in the consultation process.

Principles and procedures of consultations

2. The right of local and regional authorities to be consulted constitutes one of the core principles of local democracy and should be enshrined in national or regional law, and where practical in the constitution.

3. Local authorities should therefore be consulted by national and, where applicable, regional authorities, and have an active role in the preparation and adoption of decisions on all matters that concern them – namely the implementation of policies or legislation directly and indirectly affecting their legal status, tasks and functions and economic or financial situation – in a manner and timing such that local authorities have a real opportunity to formulate and articulate their own views and proposals, in order to influence the decision-making process.

4. National associations of local and regional authorities should have an important role in representing their local and regional authorities at national consultations. Where member States have more than one national association, these should cooperate together as closely as possible, in order to define common positions on issues that affect them and to improve their ability to contribute to the development of legislation and policies of other levels of government.

5. Consultation processes should be defined and initiated, by legislative bodies, in a clear and transparent manner, preferably enshrined in the constitution, otherwise in laws or rules of procedures of governments and parliaments, specifying the format of such consultations, who is consulting who and for what purpose, the level of participation of representatives of local authorities, the time – frame for consultations and covering all matters of interest for local authorities.

6. Consultation with local authorities should be a required part of policy-making and the legislative process to enable these authorities to express their interests and opinions in time for them to be taken into account in policy and legislative formulation.

7. All ministries that formulate policies that have implications for local authorities must consult with representatives of the authorities concerned.

8. Consultations should be conducted in written form, in meetings and in hearings in front of parliaments and governments, making clear the participatory rights of local representatives in the consultation process and the form of national and, where applicable, regional level representation in the consultation process.

9. Central and regional authorities should provide proper clear and detailed information, in writing, about proposed policies, well before the consultations are due to take place, in order for those consulted to be well informed about the motives and objectives of each planned decision or policy.
10. Strategically important decisions should be based on a careful analysis of the implications for self-governance as well as of the economic consequences for the local and regional level.
11. Local government expertise should be involved in the process of drafting policies and legislation at an early stage, for example through participation in working groups to prepare new legislation.
12. Local authorities should have right of complaint or petition that is clearly defined, preferably in the constitution, if they believe that necessary consultations have not been properly conducted, and a right to redress if it is established that procedures were not properly followed.
13. Consultations should be regular and systematic, with a clear and precise indication of the different possible forms of consultation, and the contexts in which they are used.
14. The contributions of the different parties consulted and the results of consultation exercises should be made public; a detailed written explanation of the reasons for not retaining any proposals should be communicated and published.
15. Authorities conducting consultations should make maximum use of the increased consultation opportunities provided by new media.

